DOCUMENT RESUME

ED 314 311 SO 020 380

AUTHOR	Urofsky, Melvin I.; Cox, Nancy
TITLE	From Confederation to Constitution: 1781-1789.
INSTITUTION	Virginia State Dept. of Education, Richmond.
SPONS AGENCY	Commission on the Bicentennial of the United States Constitution, Washington, DC.
PUB DATE	88
GRANT	87-CB-CX-0021
NOTE	73p.
PUB TYPE	Guides - Classroom Use - Guides (For Teachers) (052) -- Historical Materials (060)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Citizenship Education; *Constitutional History; High Schools; Learning Modules; Lesson Plans; Minicourses; *Primary Sources; State Curriculum Guides; *United States History
IDENTIFIERS	Bill of Rights; Federalist Papers; *United States Constitution; Virginia

ABSTRACT

Students should achieve a higher level of understanding and appreciation of the evolving nature of the U.S. Constitution and its relevance to contemporary societal issues by studying historical documents from the period of time between the Articles of Confederation and the Constitution. This document begins with a history of that period and of the documents that were generated. A chronology of events from the Annapolis Convention of 1786 through Virginia's ratification of the Bill of Rights in 1791 follows along with a presentation of 27 documents, including: (1) the Articles of Confederation; (2) the Northwest Ordinance; (3) letters written by George Washington and Thomas Jefferson; (4) transcripts of various debates; (5) the Virginia and the New Jersey plans for Union; (6) the Constitution of the United States; (7) some of the papers from "The Federalist"; (8) amendments proposed by Massachusetts and Virginia; and (9) the Bill of Rights. A bibliographical essay suggests 29 items for further reading. An appendix offers high school lesson plans for three of the documents presented: (1) the Virginia plan for Union; (2) debate on executive power; and (3) debate on the judiciary, the veto, and the separation of powers. These plans include a brief pretest quiz, detailed plans for instructor and students, including definition of terms, recommended resources, and techniques for effective individual, small group, and whole class instruction, and essay and objective questions for use in posttesting. The lesson plans are adaptable for use with other documents. (JB)

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Confederation

1781-1789

To
Constitution

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Printed and Distributed by the
Social Studies Service
Virginia Department of Education
P.O. Box 6-Q
Richmond, VA 23216-2060

Preface

The Code of Virginia mandates that the United States Constitution shall be taught in the public schools with emphasis given to citizenship responsibilities inherent in the rights included in this great document.

This enduring document on human rights should be taught not merely because the law requires it, but also because students need to develop an appreciation for the wisdom and validity of the ideas expressed as well as a sense of responsibility for perpetuating the basic freedoms set forth in the United States Constitution. Opportunities should be provided which cause the student to reflect upon the nature of government and the role of the individual in relation to it. Such a study should promote an understanding of the nature and proper role of law and its relevance to contemporary society.

This publication was prepared with the hope that by studying historical documents from confederation to constitution students will achieve a higher level of understanding and appreciation of the evolving nature of the United States Constitution and its relevance to contemporary societal issues.

S. John Davis

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Superintendent of Public Instruction

From Confederation to Constitution

At the Harvard commencement in the spring of 1787, John Quincy Adams told his fellow graduates that the United States was then in a "critical period." A century later, the writer John Fiske used the same phrase as the title for his history of the nation under the Articles of Confederation (see Doc. 1), and ever since, most historians have adopted the concept of a "critical period" to describe conditions between 1781 and 1787. Others, most notably Merrill Jensen, have argued that the articles operated more successfully than is commonly believed and implemented the democratic vision of the wartime radicals as expressed in the Declaration of Independence. In this view, the Constitution was the successful counterrevolution of the conservatives. Although it is a superficially simple and attractive interpretation, closer examination leads one to conclude that the structural defects of the unamended Articles would have prevented effective government in the coming years for the new nation. The Framers of the 1787 Constitution may have gone further than necessary at the time, but there can be no doubt that the country benefited from their labors.

Congress under the Confederation, to put it bluntly, lacked the minimal powers needed to govern. Congress could ask for money but not levy taxes; it could negotiate treaties but not enforce them; it could borrow money but not provide for repayment. The problems of the postwar depression as well as managing the nation's foreign affairs found Congress practically powerless to respond. A catalogue of the constitutional defects of government under the Articles provides one key to understanding the workings of the Philadelphia convention.

To begin with, the Articles provided no separate executive for the government although it authorized Congress to establish some executive departments. Ultimately, Congress created five, but the distrust of a powerful executive during the latter colonial era led Congress to keep power in its own hands as much as possible. To do so, it set up committee after committee to deal with each problem it faced. John Adams, during his career in Congress, served on more than eighty committees at one time or another.

Of the five departments, the most effective proved to be Finance, headed by the Philadelphia merchant, Robert Morris. An extremely capable man, Morris managed through sleight of hand to keep the government financially afloat and even imposed some order on the chaotic federal accounts. But lacking any reliable income, he could do nothing to reduce or even halt the growing federal debt. The other departments fared less well; when the first head of Foreign Affairs, Robert R. Livingston, resigned in May 1783, the office remained vacant for many months until John Jay could be induced to accept the post.

The Articles gave Congress no independent taxing power, and throughout the period the government could do little more than ask the states to pay their assessments. Several states recognized the gravity of the problem, and in 1781 Morris nearly secured for Congress the power to impose a 5 percent impost duty payable directly to the national government. But this involved amending the Articles, a process requiring unanimous consent by all thirteen states. Twelve agreed, but Rhode Island refused and its veto defeated any hope Morris or Congress might have had for achieving fiscal stability for the government. Two years later, a proposal to give Congress power to collect import fees for twenty-five years met a similar fate. As a result, the national debt grew from $11 million to $28 million, while the currency and notes issued by Congress declined in value. Only timely loans from Dutch bankers enabled the government to avoid bankruptcy.

Another significant defect proved to be Congress's lack of power to regulate commerce among the states or between the states and foreign nations. Each state, therefore, not only controlled its internal commercial affairs but could erect barriers against goods coming in from overseas or from other states. Following the Treaty of Paris, British imperial policy excluded American shipping from many of its former channels of trade. In retaliation, a number of states laid tonnage fees on British ships and special tariffs on British goods; for a while, Massachusetts closed the port of Boston to all British ships. British captains, however, thwarted this policy by unloading their cargoes in adjacent states; local merchants then shipped the goods overland or on coastal packets. As a result, some states erected tariff walls against goods coming in from neighboring states, giving the impression of commercial warfare with one another.

To rectify this situation, Congress in 1784 urged an amendment to the Articles to permit it to impose uniform navigation acts; despite widespread support throughout the country, the proposal failed to win ratification because two states, Rhode Island and North Carolina, vetoed it. The inability of Congress either to secure an adequate revenue or to impose a uniform trade policy pointed up still another weakness of the Articles—the need for unanimity in order to amend the document. Single states could veto any proposition, no matter how popular it was in the rest of the country. The fear of domination by the larger states had led the Framers to insert this provision, which made it impossible to secure agreement even on relatively minor issues. They had anticipated that the Articles would need to be changed, but the device they chose effectively negated that path.

The Confederation also faced numerous problems in foreign affairs, and in its relations with Great Britain, for example, some of these difficulties can be traced to defects in the Articles. Despite the 1783 Paris Treaty, the British had refused to vacate a string of forts stretching from Lake Champlain to Michilimackinac. From these forts they exercised considerable influence over the Indian tribes, and they were suspected of inciting them to make periodic raids on American settlements. The British claimed that they need not abandon the forts since the Americans had failed to pay their debts, although the treaty only called for the Congress to urge the states not to place impediments in the way of British creditors seeking collection. Similarly, the treaty required Congress to recommend that the states restore any confiscated Loyalist estates.

Congress had made these "earnest recommendations," but the states had refused to comply. Pennsylvania did pay the Penn Family $650,000 in compensation for seized lands, but that proved the exception. For the most part, Tories who had left the country rarely regained their property, and Congress had no power to compel that states make restitution. The states not only ignored the treaty provisions regarding the Tories, they actively opposed the sections calling on them to open state courts to British creditors. Virginia, where planters had incurred the heaviest debts, passed laws hampering recovery. "If we are now to pay the debts due to the British merchants," some Virginia planters asked, "what have we been fighting for all this while?" Again, Congress did absolutely nothing to force the states to act in this matter and the Articles failed to provide for a federal court system free from state control. Not until the 1787 Constitution came into effect could Britain proceed and the matter remained unsettled until 1802.

It is all too easy, in light of these handicaps, to overlook the significant achievements of the government under the Articles. The Confederation negotiated a peace treaty; it carried on diplomatic relations with foreign countries; it held the new country together; it settled land disputes with the Indian tribes; and in two brilliant pieces of legislation, it established a farsighted policy for the settlement and incorporation of western lands. In this one area at least, Congress had constitutional authority to deal with the matter, and its success buttresses the argument that the failure of government in the "critical period" derived from the defects of the Articles and not from political incompetence.

Once the states had ceded their claims to western lands to the federal government, Congress had to develop plans for their future disposal. In 1785, Congress provided for a rectangular survey of the Northwest Territory into townships six miles square. Each township would be subdivided into 36 sections one mile square, or 640 acres. Land offices would sell the land at public auction at no less than $1 an acre, with a 640-acre minimum and no provisions for credit. The federal government reserved four sections of each township for its own use and set aside one section for the support of education. Thomas Jefferson, whose committee drafted the ordinance, saw this huge public domain as a source of revenue for the money-starved Confederation. But the lack of credit excluded many small farmers and land speculation companies did most of the business in the territory for the next fifty years. The companies did, however, subdivide sections and sell smaller parcels on credit, so the act achieved one of its goals—bringing in settlers.

Two years later, Congress passed the Northwest Ordinance—the most important piece of legislation in the Confederation period—which provided for territorial government and the method by which territories would become states (see Doc. 2). Initially, governors and judges appointed by Congress would rule the area. When the territory contained 5,000 free male inhabitants of voting age, the voters could elect a territorial legislature with the status of a subordinate colonial assembly, which in turn would send a nonvoting delegate to Congress. No more than five or less than three states were to be carved out of the Northwest Territory; whenever any of these parts had 60,000 free inhabitants, it could be admitted to the Union on an equal basis.

The ordinance included a bill of rights that guaranteed religious freedom, representation proportional to population, trial by jury, habeas corpus, and the application of the common law. One article, a direct reflection of Jeffersonian thought, held that "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." Finally, the ordinance outlawed slavery in the territory, a provision Jefferson had been unable to secure in the 1785 law.

The land ordinances marked the high point of the Confederation government and set the policy for the nation's westward expansion. Yet at the same time that Congress enacted this far-reaching legislation, it proved utterly incapable of dealing with a serious crisis that resulted in the rapid crumbling of public confidence in the government under the Articles.

The issue of a sound currency grew to crisis proportion in 1786. The value of paper money issued by the Continental Congress practically evaporated, while the bonds issued during the Revolution and Confederation depreciated sharply, dropping to little more than 15 cents on the dollar. The shortage of cash led to the popular demand for the states to issue paper currency and for the postponement of tax and debt payments. Farmers especially found themselves squeezed by the depression, with little money coming in and creditors and tax collectors demanding payment in hard currency. In 1785 and 1786, seven states responded to the problem by issuing paper currency.

Five states—Pennsylvania, New York, New Jersey, South Carolina, and Rhode Island—used the unbacked money to provide credit to farmers through state loans, taking mortgages on their farm as security. In North Carolina and in particular Rhode Island, the debtor factions pushed through one scheme after another to relieve the pressure on borrowers.

In 1786, Rhode Island issued over $100,000 in paper and declared it legal tender for the payment of all debts. Creditors fled the state to avoid having to accept the worthless paper, while merchants closed their doors rather than sell goods for it. Rioting mobs led the state legislature to pass a "forcing act," which levied fines and denied jury trials to persons refusing to take the currency at face value.

To conservatives, this mob action raised specters of their most dreaded fear-anarchy—a specter that seemed to materialize in western Massachusetts in 1787. The Bay State had been under the control of conservatives since 1780, and the General Court, responding to pressure from wealthy Boston creditors, moved to pay off the state debt through large court fees and poll and land taxes. The levies fell most heavily on farmers and the urban poor who had no money to pay and whose petitions for redress fell on deaf ears in the legislature. When the assembly adjourned in late 1786 without providing relief, three western counties erupted in revolt.

Armed bands roamed the countryside, closing the courts and preventing foreclosures. A ragtag "army" under Daniel Shays marched on the federal arsenal at Springfield in January 1787, where the militia easily dispersed it with a single volley, leaving four dead. Soon after, General Benjamin Lincoln routed the remainder of the Shaysites at Petersham. The courts sentenced fourteen of the leaders to hang, but the state government, finally awakened to the problem, acted wisely. The governor pardoned or released all fourteen ringleaders after a short jail term, and the General Court quickly passed legislation suspending direct taxes for a year, lowering court fees, and exempting household goods, clothing, and tools from debt liens.

The pitiful revolt had been put down quickly, but it served as a climax to growing conservative worries over the viability of the Confederation government. Before the full extent of Shays' Rebellion became known, Massachusetts had appealed to Congress for help in putting down the insurrection, but congress was unable to help. George Washington wrote: "I am mortified beyond expression that in the moment of our acknowledged independence we should by our conduct verify the predictions of our transatlantic foe, and render ourselves ridiculous and contemptible in the eyes of all Europe" (see Doc. 3). Great Britain, despite accusations that it had secretly fomented the uprising, actually had nothing to do with it; nonetheless, Tories in London took hope that the new nation would soon collapse. Only Thomas Jefferson, insulated from events in Paris and, as a planter sympathetic to the debtor cause, viewed Shays' Rebellion with equanimity.

A little rebellion now and then (he wrote to Madison) is a good thing . . . . Unsuccessful rebellions indeed generally establish the encroachment on the rights of people which have produced them. An observation of this truth should render honest republican governments so mild in their punishment of rebellion so as not to discourage them too much.

Because the names of Thomas Jefferson and James Madison have been closely linked as the "great collaborators," one tends to ignore the significant areas in which they disagreed. In regard to Shays' Rebellion, Madison definitely parted company with his friend and, like John Adams, viewed with horror the attack on law and order in Massachusetts. Where Jefferson saw the greatest danger to democracy as the tyranny of centralized authority, Madison feared the undisciplined power of mobs to trample on both individual and property rights. Jefferson envisioned a natural harmony between the different elements of society; Madison recognized the inherent conflict between factions that could rupture the body politic. Jefferson's thought reflected his experience in Europe, where he saw firsthand how ruthless governments preyed on the people, with society split between the powerful and the powerless, between the "wolves and sheep." Madison, at home during the critical years of the Confederation, witnessed the inflationary moves of state legislatures attempting to appease an unruly populace and saw the need for a stable central authority.

Such concerns had led Madison and others to begin discussions on strengthening the national government even before the rebellion. Unable to convince his colleagues in the Virginia assembly that the Articles of Confederation needed revision, Madison sought other avenues to pursue this goal. In March 1785, he helped arrange a meeting of commissioners from Virginia and Maryland at Mount Vernon to settle outstanding problems in the Potomac River and Chesapeake Bay. Until 1776, the British had managed to hold down friction between the two colonies, but following independence, tensions flared up over problems of navigation, fishing, lighthouses, and customs duties. In 1777, Virginia had proposed a meeting with Maryland to settle the disputes. Nothing came of this conference, but in 1785, the commissioners agreed on the necessity for interstate cooperation, and the Maryland delegates suggested that Pennsylvania and Delaware, which also had interests in these waters, be brought into the talks. The Virginia legislature endorsed the findings and at Madison's suggestion issued an invitation to all thirteen states to attend a meeting to discuss general commercial problems.

Only five states attended the Annapolis Convention in September 1786—New York, New Jersey, Pennsylvania, Delaware, and Virginia. The commissioners elected John Dickinson of Delaware as chairman, but they could agree on little else. Apparent failure, however, turned into victory when Alexander Hamilton of New York proposed that they issue a report calling for a constitutional convention to secure a more powerful central government that was capable of meeting the crisis before them. Madison urged Hamilton to tone down his draft, since as it stood it would certainly fail to win approval of the Virginia assembly. In a brilliant revision, Hamilton subtly linked a call for a general commercial convention into one pointing to a total constitutional overhaul and, in words adopted by the gathering on September 14, 1786, announced that the power of regulating trade is of such comprehensive extent and will enter so far into the general system of the federal government, that to give it efficacy and to obviate questions and doubts concerning its precise nature and limits may require a correspondent adjustment of other parts of the Federal System. The delegates all urged their respective states to join in a general call for such a gathering (see Doc. 4).

Madison returned to Virginia and immediately drafted a resolution by which the state appointed representatives to a federal convention. By early February 1787, New Jersey, Pennsylvania, North Carolina, New Hampshire, Delaware, and Georgia had joined in the call. Although Congress initially stalled on the issue, once seven states had indicated their willingness to participate, Congress agreed and on February 21, 1787, declared it "expedient" to convene a convention "for the sole purpose of revising the Articles of Confederation." Even though Rhode Island remained aloof from the proceedings throughout, twelve states ultimately named seventy-three men to attend the convention that May in Philadelphia. Of these, fifty-five participated at one time or another, and after four months of labor, thirty-nine signed their names to the Constitution they had drafted.

The delegates to the Constitutional Convention in Philadelphia, despite their average age of forty-two, had extensive experience in government and were fully conversant with the political theories of the Enlightenment. But as John Dickinson warned, "Experience must be our only guide; reason may mislead us." Although the document they drafted reflected many of the ideas of eighteenth-century writers in Britain and on the Continent, the problems faced by the Confederation remained uppermost in their minds. Section after section of the Constitution is a direct response to the defects of the Articles, even though it is an injustice to both the document and its authors to see the Constitution as merely a reaction to difficulties of previous years.

Few gatherings in the history of this or any other country could boast such a concentration of talent. Although John Adams and Thomas Jefferson were conspicuous by their absence (one serving as ambassador to England, the other to France), many of the great figures of the Revolutionary era participated in this crowning work of establishing the new nation. George Washington, the victorious commander-in-chief of the war, and Benjamin Franklin, who had been urging a union of the colonies since 1774, lent their fame to the task and inspired confidence in the final document. George Mason, author of the Virginia Bill of Rights, and James Wilson of Pennsylvania, possibly the ablest lawyer in the country, worked with Alexander Hamilton of New York, Roger Sherman of Connecticut, Elbridge Gerry of Massachusetts, and Charles Cotesworth Pinckney of South Carolina, who had long urged a more powerful national government. Most important of all, James Madison of Virginia, only thiry-six years old at the time, contributed his encyclopedic knowledge of political history and thought as well as his indefatigable energy. Madison is frequently acknowledged as "the father of the Constitution" in recognition of the key role he played at Philadelphia, but as he modestly told one admirer nearly fifty years later, "You give me a credit to which I have no claim . . . This was not, like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads and many hands."

By May 14, the appointed day for the convention to begin, only the Virginia and Pennsylvania delegates had arrived. On May 25, twenty-nine representatives from nine states began their work in earnest. They unanimously elected George Washington as president of the convention, and his calming influence contributed enormously to the relatively smooth and effective proceedings. The delegates also voted to meet behind closed doors in order to block untoward pressure and prevent speech making to the galleries. Although some news leaked out from time to time, the convention preserved a remarkable degree of secrecy throughout the hot summer of 1787. Fortunately for history, James Madison kept a detailed set of notes and ever since its posthumous publication in 1840, it has been the standard source of our knowledge about the workings of the convention.

The delegates first discussed the so-called Virginia Plan (see Doc. 5), which Madison had drafted with advice from Washington, while they waited in Philadelphia for a quorum. When Virginia Governor Edmund Randolph presented this plan on May 29, he openly called on the convention to ignore its instructions to limit its work to revising the Articles and instead to draft and submit a wholly new proposal to the states. The Virginia Plan proposed separate executive, legislative, and judicial branches with a strong national government that could enact laws binding on the states as well as on individual citizens. The legislative power would be lodged in a bicameral congress, with a lower house chosen by popular vote and an upper chamber elected by the lower house from nominations submitted by the state legislatures. The Congress would have the power to disallow state laws and it could define the limits of the national government's authority as well as that of the states.

Because the Virginia Plan apportioned congressional representation on the basis of population, the smaller states feared that large states would dominate the government. On June 15, William Patterson responded with the New Jersey Plan (see Doc. 6), which kept the existing structure of Congress in which each state had only one vote. This plan, however, did give Congress the power to impose taxes, regulate commerce, and name a plural executive and a federal supreme court. Since the New Jersey Plan hewed to the instructions that the convention limit itself to revising the Articles, the delegates now had to choose what course they would follow. On June 19, they decided to work toward a national government, as Randolph had suggested. At this point, the delegates agreed that the central government should have broadly expanded power, especially in the areas of taxation and regulation of trade; state powers had to be curtailed correspondingly.

One scholar has described apportionment as an issue that was less philosophical than geographical, but rarely have states taken a position on policy matters solely according to their size. For a while, however, the issue threatened to tear the convention apart, with the larger states falling in behind the Virginia Plan and the smaller states backing the New Jersey proposal (see Doc. 7). Roger Sherman broke the impasse with the Connecticut Plan, frequently called the "Great Compromise." Under the Connecticut Plan, the House of Representatives would be apportioned according to population, while each state would have two votes in the Senate.

Geography also divided the convention on other issues. Southerners wanted slaves counted for representation in the House but not in assessing taxes, while Northerners took just the opposite view. The delegates quickly compromised, agreeing that slaves would be counted on a three-fifths ratio (five slaves counting as three free persons) for both purposes. The three-fifths formula derived from a suggestion put forward a few years earlier for taxing the states to support the Confederation; a number of delegates knew about it, which undoubtedly facilitated the compromise.

In a similar manner, the delegates found a middle ground between those Southern states that wanted to continue the importation of slaves from Africa and those states that opposed the traffic in human flesh. The trade could be prohibited, but not for twenty years. During that time, Congress would have the power to impose a $10 head tax on all imported slaves (see Doc. 11). Southerners also opposed giving Congress unlimited power over commerce, fearing that Northern merchants would manipulate trade and navigation acts to the detriment of Southern commodities. Once again, compromise settled the dispute. Although Congress retained extensive powers over foreign and interstate commerce, it could not levy an export tax.

In fact, once the delegates had agreed to the Great Compromise, no major divisions marred the convention. Fine points had to be worked out and they spent much time on such questions as how many years a man had to be a resident in the United States in order to hold office. But once the delegates agreed on the need for a more powerful central authority to replace the Confederation, they worked in harmony to secure that new government. A committee on detail then put the various resolutions passed by the convention into a manageable form. Finally, after four months, the task came to an end and on September 17, 1787, the remaining delegates signed, some with misgivings and some with optimism (see Docs. 12, 13), what William Gladstone would later describe as "the most wonderful work ever struck off at a given time by the brain and purpose of man."

Only 5,000 words long, the Constitution of 1787 (see Doc. 14), with its relatively few amendments, has provided an effective framework for governing the United States through two hundred tumultuous years. Its various clauses and articles have been interpreted and reinterpreted to meet the changing needs of a developing nation, but its broad purposes and general scheme of government have remained essentially intact.

Despite the many differences that distinguished the government under the Constitution from that under the Articles, both were federalist in nature. The Founding Fathers believed that governmental powers had to be distributed between the national and the state governments and that this division would not only serve a balancing function, but would also protect individual liberties. As Madison wrote in *The Federalist* (see Doc. 18), "In a free government the security for civil rights must be the same as that for religious rights . . . security in both cases will depend on the number of interests and sects . . . . This view on the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government."

The philosophical roots of federalism was derived not only from European writers, but from the American experience as well. The early Puritans took the Reformation view of a religious convenant and applied it to social and political affairs. John Winthrop, the first governor of Massachusetts, wrote of the "liberty I call civil or federal; it may also be termed moral, with reference to the convenant between God and man, in the moral law, and the political covenants and constitutions, amongst men themselves."

The federalism embodied in the Constitution is uniquely American and although the twentieth century has seen a major shift in power from the states to the national government, the idea of a partnership remains a central tenet of constitutional thought. If the Union is no longer "a regular marriage," as Lincoln phrased it, it still remains, in the words of Chief Justice Salmon P. Chase, "an indestructible Union of indestructible States" (*Texas* v. *White*, 1869). The Framers saw both state and national governments as active participants in the political process and the Supreme Court has devoted a great deal of effort over the last two hundred yeas to defining the nature and limits of this partnership.

While the states and the federal government shared powers, the Constitution clearly put the sovereignty of the nation over that of the states, although it would take a civil war to finally confirm this view (see Doc. 9). The very first words of the preamble, "We the People of the United States," indicated that the Constitution and the government it created derived its authority and legitimacy directly from the people and not, as under the Articles, from the states. Article VI reinforced this point, declaring the Constitution and laws and treaties made by the national government the supreme law of the land, with the judges in every state bound by them and with state constitutions and laws giving way to those of the United States.

Many of the sections directly addressed the perceived weaknesses of the Articles of Confederation. Congress now had the power to raise an independent revenue, regulate the currency, oversee interstate and foreign commerce, and raise an army (see Docs. 16, 17). A separate federal court system prevented states from obstructing justice or impeding implementation of treaties that called for judicial settlement of disputes (see Doc. 20). The states in turn lost considerable power; they could no longer issue money, abrogate contracts, make treaties with foreign countries, or levy tariffs or export duties. Simple majorities in Congress, as well as a modified amendment process, prevented any one state from obstructing the will of the majority.

Perhaps the most striking feature of the Constitution was how extensively it implemented the prevailing notions of separation of powers. Unlike the Articles and most state constitutions, clear lines divided the executive, legislative, and judicial functions. In a sharp departure from recent experience, the Framers placed enormous executive power in the hands of the president, a complete turnabout from the state models with their weak governments (see Doc. 8). The president as chief executive officer had a veto power, served as commander-in-chief of the armed forces, and appointed all executive and judicial officers. Madison, Hamilton, and Wilson wanted to make the president even more independent by having him elected directly by the people, but in the end they settled for indirect voting through the electoral college. The convention left the method of choosing electors to the states and before long, nearly all the states had electors chosen by popular vote. Similarly, Article III gave federal courts more extensive power than most state courts then enjoyed. Although judicial view is not explicitly mentioned, it is fairly certain that the Framers assumed that the courts would exercise this power, since they inserted the Supremacy Clause in Article VI and specifically rejected a proposal that Congress settle any conflicts between state and federal authority.

At the same time, the Constitution's scheme of government provided a series of checks to prevent any one branch from overbearing the others (see Doc. 18). Although some parallels may be found in the Whig notion of British government, the Senate did not equate to the House of Lords, nor the president to the king. Representatives, directly elected, had only two-year terms so the people would have frequent opportunities to determine if their services had been satisfactory. Senators, indirectly elected, would have longer terms; the Framers originally intended members of the upper house to be somewhat akin to the colonial councillors, men of substance, who, insulated from frequent elections, would take a more deliberative view. The president could veto bills, but Congress could override him. Judges received life tenure, but they could be removed for misbehavior. The president and Congress each had extensive powers, but most of these powers had to be exercised in cooperation with each other.

Finally, the Framers realized that their handiwork would have to be adjusted from time to time, and although they did not want to make the amendment process too easy, neither did they want to recreate the impasse experienced under the Articles, by which any one state could block revision. Amendments to the Constitution could be proposed by two-thirds of the states. Ratification was accomplished by three-fourths of the states acting either through their legislatures or in special conventions.

Recognizing that the Constitution would not stand any chance of approval if subjected to the rule of unanimity required by the Articles, the convention provided in Article VII that confirmation by nine states would be sufficient to put it into effect. Moreover, the states were required to call ratification conventions, since the Framers feared that the state legislatures would be reluctant to give up any of their powers. Considering that a constitution already existed with a designated amendment procedure, this approach constituted a legal revolution in itself. By this time, however, the Confederation Congress itself had agreed to the need for a new scheme of government. After defeating motions to censure the convention for exceeding its instruction, Congress submitted the Constitution to the states on September 28, 1787, less than two weeks after the Philadelphia Convention had completed its work.

The debates in each state over the Constitution provide the best illustrations we have of the conflicting political theories prevalent among the Revolutionary generation. The writings of those who supported ratification as well as of those who opposed it indicate the values, fears, and ideals they held for the new nation. Some of the writings, especially *The Federalist*, rank among history's most important statements on the nature of government and are still valuable today in determining the original intent of the Framers (see Docs. 15–20). But the statements of those who fought ratification remain useful as well, since often the difference between the two groups centered less on goals and on the means to achieve them. (see Docs. 21–23).

The advocates of the new document quickly organized and adopted the name "Federalists," although they might more properly be called "Nationalists." Their opponents—who actually favored a truer federalist system with more responsibility and authority in the states—became known as the "Antifederalist." From the start the initiative resided with the Federalists. Their leaders had been at the Philadelphia Convention and already knew both the document and the arguments surrounding the major point. Better organized, they represented the more articulate elements in the community. Most importantly, they advocated a well-reasoned solution to the problems of the Confederation, problems that by this time the whole country recognized. The Antifederalists had difficulty in defending the Articles and had no counterproposal to make in lieu of the Constitution.

The debates over ratification took place in every state and for several months, the entire country's attention focused on the crucial question of what form of government the new nation should adopt. The press carried many of the arguments, with proponents and opponents utilizing the familiar technique of publishing essays under classical pseudonyms. Head and shoulders above the rest stood the eighty-five articles that appeared in the New York Press between October 1787 and May 1788 over the name "Publius," which are known collectively as *The Federalist*. Of them, John Jay of New York wrote five (illness forced his withdrawal from the project), James Madison of Virginia wrote thirty, and Alexander Hamilton of New York wrote a majority of the balance; the authorship of several remains in doubt.

The two chief authors, Hamilton and Madison, worked at near fever pitch for six months, but aside from a division of topics, they cannot be said to have been full collaborators. As Madison told Jefferson: "Though carried on in concert, the writers are not mutually answerable for all the ideas of each other, there being seldom time for even a perusal of the pieces by any but the writer before they were wanted at the press, sometimes hardly by the writer himself." There is, as a result, no philosophical uniformity throughout the work; instead, two distinct strands of political thought can be discerned. On the one hand, Hamilton's views have been characterized as an early system of economic nationalism, with the government an active agent to promote the "general interests" of the people, as interpreted through the "sounder" judgment of the commercial elite. Hamilton appealed directly to those groups that had suffered most from the ineffectiveness of the Confederation, and he held out the prospect of stability and prosperity under the Constitution.

Madison, in his work, argued for a limited and balanced government, devoted primarily to securing individual justice and equality, with popular sovereignty as its only defensible source. In perhaps the most famous single essay, No. 10 (see Doc. 15), Madison asserted that the size and diversity of the country and the interplay among competing factions would make it impossible for any single interest to create a majority and seize control of the government. At the time, conventional wisdom held that republics could succeed only in small, homogeneous countries like Switzerland or the Netherlands; larger countries would inevitably deteriorate into anarchy, followed by a tyranny of the strongest faction. Madison insisted on just the contrary, given a system of strong checks and balances, size and diversity could only strengthen the polity. "Extend the sphere," he argues, "and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens."

By enlarging the scope of government, Madison went on to explain, the new Constitution provided the ideal republican solution for the problem of competing interests. The different factions would have a larger area in which to compete and iron out their differences. Republicanism recognized the heterogeneous nature of a free society and took these differences (which traditionally had been seen as destructive of both liberty and effective government) and turned them into assets. The open competition, the need to adjust and compromise, would force the majority to heed the rights of minorities in order to gain their support.

For the Federalists, the proposed Constitution not only remedied the many defects they perceived in the Articles of Confederation, but it held our promise for an effective government that could guide the United States to security and prosperity. To achieve these ends, they believed it necessary to shift powers away from the states into a central administration, one demonstrably strong enough not only to weather external attack but also to control the states lest the Union be torn apart by internal discord. The Antifederalists, aware of the problems besetting the country, agreed in principle with the need for a national government. But they feared and opposed the new balance of powers, believing that strong state governments provided the only sure defense of their liberties against a potentially tyrannical central authority (see Doc. 21).

This argument was most forcefully expressed in the leading Antifederalist pamphlet, Richard Henry Lee's *Letters from the Federal Farmer* (see Doc. 22). Even before the Constitution appeared in September, 1787, Lee stood ready to oppose it. He believed in a national government, but one founded on "proper" principles. These principles revolved around the rationalist notion that men are born with certain rights and there is a constant struggle between individuals seeking to retain these rights and governments attempting to take them away. Because the people kept state governments under close control, they posed little threat to individual rights. But to shift power to a central authority beyond the immediate control of the people would tilt the balance away from freedom. Comments such as those by George Washington, in his letter transmitting the Constitution to the Continental Congress, that "individuals entering into society must give up a share of liberty to preserve the rest," struck terror into men who saw danger to personal rights from every quarter.

The fear for individual liberties, and especially the absence of a bill of rights, alarmed people who otherwise favored the new document. Hamilton, in *Federalist* No. 84, insisted that a separate bill of rights was unnecessary, because "the constitution is itself . . . A BILL OF RIGHTS." But Jefferson, after receiving a copy of the proposed Constitution, disagreed. He told Madison that he liked very much the new scheme of government and thought it had many praiseworthy features. But where were the guarantees of freedom of religion and of the press, protection against standing armies, and the other assurances that by now existed in every state constitution? "A bill of rights," he concluded, "is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest upon inferences" (see Doc. 24). The absence of a bill of rights became one of the chief arguments against the Constitution, and several states ratified only on the condition that these guarantees be added as soon as possible (see Doc. 25).

The Antifederalists also tried to downplay the supposed crisis facing the nation, maintaining that the Confederation could solve existing problems. "It is natural for men, who wish to hasten the adoption of a measure," charged Lee, "to tell us, now is the crisis—now is the crucial moment which must be seized, or all will be lost" (see Doc. 22). They also tried to pick apart the scheme of government by attacking features: the judiciary would be oppressive, the president would be a worse despot than the king, the government existed for the benefit of the merchants, but in the end, they most feared the shift of power. As Elbridge Gerry wrote: "The constitution proposed has few if any federal features; but is rather a system of national government."

Historians have spent much time attempting to discern some pattern that dictated which groups or individuals supported the Constitution and which opposed it. The issue received little attention in the nineteenth century, as one writer after another heaped praise on the generation that had waged the war for independence and then, after a brief misstep with the Articles, had struck off the sacred Constitution. They echoed Jefferson's description of the Philadelphia Convention as "an assembly of demigods." But in 1913, historian Charles A. Beard, reflecting the progressive era's preoccupation with conspiracy, advanced the thesis in *An Economic Interpretation of the Constitution* that the Framers had had strong pecuniary interests in securing a stronger government. Beard described the Federalists as men of "personalty," merchants and lawyers who held government bonds, speculators in western lands, and creditors in general whose wealth was in paper. Their opponents consisted of holders of "realty," small farmers and planters whose wealth consisted of land and slaves. Creditors and speculators stood to gain from such features as the prohibitions against states issuing currency or abrogating contracts. Beard's book touched off an ongoing debate, and although few people would now deny that some economic considerations played a part in the drafting and ratification of the Constitution, a division between personalty and realty just did not exist. James Madison, the "father of the Constitution," had no personalty, while some Antifederalists held a large amount of notes. After doing extensive research into the actual holdings of the Framers, using material unavailable to Beard, Forest McDonald concluded that Beard's "economic interpretation of the Constitution does not work."

An economic interpretation tends to ignore the real philosophical differences between the Federalists and their support of a strong central government, and the Antifederalists, who feared that individual rights would be sacrificed for the sake of government efficiency. Background, education, and experience surely played important roles, but so did ideas concerning the nature of government, and these ideas seemed to be distributed among all groups in American society.

Perhaps the most persuasive suggestion is one put forward by Erick McKitrick and Stanley Elkins, who labeled the Founding Fathers as the "young men of the Revolution." As noted earlier, the average age of the men at the Philadelphia Convention was forty-two. They had, for the most part, come to political maturity at the time of the War for Independence. They held important offices, many of them for the first time, under the Continental Congress and not in state governments. They learned to see the world around them in terms of the nation's needs and problems, as opposed to the more parochial viewpoints of the states. The success of the United States headed their agenda and the Constitution represented a distinct improvement in the odds of the young nation actually surviving. The Antifederalists, on the other hand, had made their adherence to the state as the primary focus of government. They never learned to take the larger, national view, and many of them never held national

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office. The shift of power proposed in the new Constitution threatened their political base, and they naturally resisted.

Undoubtedly all these theories contain kernels of truth, some more than others. In the end, however, the states, one by one and for a variety of reasons, came over to the Federalist position. Delaware, Pennsylvania, and New Jersey ratified before the end of 1787, Georgia and Connecticut followed early in January 1788. Massachusetts saw the first close fight, but the state convention approved the Constitution on February 6, by a vote of 187 to 168. By June 21, Maryland, South Carolina, and New Hampshire had ratified, providing the necessary nine states to put the Constitution into effect (see Chronology). But Virginia and New York had still not acted and without their participation the Union could not succeed. Both states had strong Antifederalist elements who feared a powerful central government. But the same stratagem employed in Massachusetts, the promise of adding a bill of rights in the near future, won over sufficient votes in Virginia to secure ratification on June 25, by a vote of 89 to 79. In New York, Alexander Hamilton engineered one delay after another in the hope that the Antifederalists' opposition would weaken as they saw other states ratify. The strategy worked, and on July 26, 1788, New York approved, by the narrow margin of 30 to 27. North Carolina and Rhode Island held out until an actual bill of rights had been submitted by Congress. North Carolina joined the Union on November 21, 1789, and Rhode Island, stubborn to the last, did not ratify until May 29, 1790. By then, however, the new ship of state had already been launched. After adopting an ordinance fixing the seat of the new government in New York and arranging for the election of the president and the convening of the next Congress on March 4, 1789, the Confederation adjourned permanently on October 10, 1788.

When the new Congress met in 1789, one of the first items on its agenda was a bill of rights, since several states had ratified the Constitution on condition that such a list be added.

To ensure that Congress limited itself to a bill of rights and did not debilitate the government, Madison took personal charge of reducing the various proposals submitted by the states to a manageable list and then steering it through Congress. Originally, he intended that amendments would be worked into the text of the Constitution, since, he feared, if set apart at the end they might be treated as secondary and different. Although he failed in this, his worries proved unfounded. Amendments to the Constitution have been treated by the people and their government as equal and integral parts of the Constitution.

Aside from specific guarantees, Madison recommended an opening statement that would explicitly incorporate the philosophy of Jefferson's Declaration of Independence and George Mason's Virginia Declaration of Rights. In fact, the wording he proposed came almost verbatim from Mason's second paragraph of the Virginia Declaration: That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people. The Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property; and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purpose of its institution.

The confusion in the First Congress over exactly what the Bill of Rights should include worked against Madison's proposal. The legislators wanted to avoid general philosophical statements in favor of specifics and Madison's proposed first amendment died in committee. So did his suggestion that, in addition to the right to bear arms, conscientious objectors be excused from military service.

In late April 1789, the House approved seventeen amendments and forwarded them to the Senate for its concurrence. The upper chamber, however, disagreed with some of Madison's wording and condensed several sections into shorter, more succinct form. The Senate dropped a general statement, which Madison said he prized above all the others, that prohibited the states from infringing on personal rights. After the Senate completed its revisions, twelve amendments remained. A joint committee of the House and Senate ironed out the remaining differences and on September 24, 1789, the House gave its approval, followed a day later by the Senate.

Of the twelve amendments submitted to the states, the first two, concerning adjustments in congressional representation and limits on compensation for members of Congress, failed to win approval. The remaining ten went into effect when Virginia, the eleventh state, ratified in December 1791 (see Doc. 26). They comprised an essential catalogue of the rights Americans held dear from both their English heritage as well as from their own experience—freedom of speech, press, and religion, and the rights of assembly and petition (I); the right to bear arms (II); the right to be secure in one's household (IV); trial by jury in both criminal and civil cases (VII); protection against self-incrimination and double jeopardy (V); due process of law and protection of private property from the government (III); the right to face one's accusers and the ability to secure witnesses on one's behalf (VI); prohibition of excessive fines and bail, as well as protection against cruel or unusual punishment (VII).

All these are contained in the first eight amendments. The ninth and tenth, properly speaking, are not really part of the Bill of Rights, but are catchalls designed to limit the powers of the federal government. The ninth provides that the "enunciation in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," and has had a limited history of adjudication, leading one scholar to term it "the forgotten amendment." The tenth, which held that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people," became the focus of sectional animosities in the nineteenth century and of states' rights debates in the twentieth. At the time of its adoption, however, Madison and other Federalists did not believe that this amendment either conferred additional powers on the states or limited the legitimate scope of federal authority. The Tenth, in fact, derived almost word for word from the Articles of Confederation but with the term "expressly" deliberately omitted to indicate that the framers did not want to hamper the national government. No doubt both amendments represent concessions to those who feared that the Constitution had granted too much power to the new government, but their precise meeting remains vague to this day.

By itself, no scrap of paper can guarantee civil liberties, and the history of the Bill of Rights has consisted of resistance to its limitations on the one hand and expansion of its coverage on the other. Perhaps most important for the future, courts would have constitutional authority to intercede when fundamental liberties stood endangered. But in the end, as twentieth-century jurist Learned Hand reminded us, only the people, through their own efforts, can preserve their liberties. Nonetheless, over the years James Madison's prediction has been confirmed: "The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulse of interest and passion." There would be continuous threats to these liberties, and occasionally the forces of political passion or bigotry would prevail; but in the past two centuries, the Bill of Rights, which some contemporaries dismissed as a restatement of the obvious, has acquired a life of its own, and its fundamental rights have expanded far beyond their original meaning.

In retrospect, we now know how successfully the Framers wrought their work. If not an "assembly of demigods," they nonetheless created a brilliant scheme of government that has served this nation well for two hundred years. Although it is possible that amendments to the Articles might have enabled the Confederation to function more effectively for a number of years, eventually some radical surgery would have been necessary. The weaknesses of the Articles may actually have provided the greatest contribution to constitutional development. Theoretically, the Articles should have worked but they did not. This led the Framers to rely, not on abstract theory, but on concrete experience. It may well have been impossible to have secured the strong government established in the Constitution without the experience of the Confederation.

Chronology

1786

Sept. 11–14	Annapolis Convention

1787

Feb. 21	Congress calls Constitutional Convention
Mar. 14	Rhode Island refuses to attend
May 14	Convention scheduled to open, but quorum not present
May 25	Seven states present, convention begins
July 13	Congress adopts Northwest Ordinance
Aug. 6	Committee of Detail submits draft of entire Constitution to convention
Sept. 12	Committee on Style submits its revised draft to convention
Sept. 17	Delegates sign Constitution and adjourn
Sept. 26–28	Congress debates Constitution
Sept. 28	Congress submits Constitution to states
Sept. 29	Pennsylvania calls state convention
Oct. 8	First "Letter from the Federal Farmer" appears
Oct. 17	Connecticut calls state convention
Oct. 18	First "Brutus" essay appears
Oct. 25	Massachusetts calls state convention
Oct. 26	Georgia calls state convention
Oct. 27	*Federalist* No. 1 appears
Oct. 31	Virginia calls state convention
Nov. 1	New Jersey calls state convention
Nov. 27	Maryland calls state convention
Dec. 6	North Carolina calls state convention
Dec. 7	Delaware becomes first state to ratify Constitution, 30–0
Dec. 12	Pennsylvania convention ratifies, 46–23
Dec. 14	New Hampshire calls state convention
Dec. 18	New Jersey convention ratifies, 38–0
Dec. 31	Georgia convention ratifies, 26–0

1788

Jan. 9	Connecticut Convention ratifies, 128–40
Jan. 19	South Carolina calls state convention
Feb. 1	New York calls state convention
Feb. 6	Massachusetts convention ratifies, 187–168
Mar. 1	Rhode Island calls statewide referendum
Mar. 24	Rhode Island referendum rejects Constitution, 2, 711–239

Apr. 26	Maryland convention ratifies, 63–11
May 23	South Carolina convention ratifies, 149–73
May 28	Last *Federalist*, No. 85, published
June 21	New Hampshire convention ratifies, 57–47, and becomes the ninth state necessary for adoption
June 25	Virginia convention ratifies, 89–79
July 2	Congress receives news of New Hampshire ratification, and appoints committee to draft legislation to put Constitution into operation
July 26	New York convention ratifies, 30–27
Aug. 2	North Carolina refuses to ratify until amendments are submitted to Congress and to another state constitutional convention
Sept. 13	Dates set for election of president and meeting of new Congress to be elected under Constitution
Oct. 10	Confederation Congress adjourns

1789

Mar. 4	First Congress under Constitution meets
Apr. 30	George Washington inaugurated as President
June 8	Madison introduces Bill of Rights amendments in Congress
Sept. 26	Congress adopts twelve amendments and sends them to states for ratification
Nov. 21	North Carolina convention (second) ratifies, 194–77

1790

Jan. 17	Rhode Island calls state convention
May 29	Rhode Island convention ratifies, 34–32, and the last of the original thirteen colonies joins the new Union

1791

Dec. 15	Virginia is tenth state to ratify ten of the twelve proposed amendments, which now become part of the Constitution as the Bill of Rights

Documents

1. Articles of Confederation
2. Northwest Ordinance
3. George Washington to David Humphreys (22 October 1786)
4. Proceedings of State Commissioners at Annapolis, Maryland (11–14) September 1786
5. The Virginia Plan for Union
6. The New Jersey Plan for Union
7. Debate on Representation (31 May 1787)
8. Debate on Executive Power (1 June 1787)
9. Debate on Federalism (21 June 1787)
10. Debate on the Judiciary, the Veto, and Separation of Powers (17 and 19 July 1787)
11. Debate on Slavery (21 and 22 August 1787)
12. Signing the Constitution (17 September 1787)
13. George Washington to David Humphreys (10 October 1787)
14. The Constitution of the United States of America
15. *The Federalist* No. 10 (Madison)
16. *The Federalist* No. 23 (Hamilton)
17. *The Federalist* No. 41 (Madison)
18. *The Federalist* No. 51 (Madison)
19. *The Federalist* No. 70 (Hamilton)
20. *The Federalist* No. 78 (Hamilton)
21. George Mason, "Objections to the Constitution of Government Formed by the Convention"
22. "Letter from a Federal Farmer" No. 1
23. Essays of "Brutus" to the Citizens of New York, No. 1
24. Thomas Jefferson to James Madison, (20 December 1787)
25. Amendments Proposed by the Massachusetts Convention
26. Amendments Proposed by the Virginia Convention
27. The Bill of Rights, Amendments 1–10 to the Constitution

Document 1. Articles of Confederation

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy-seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia

Article I. The stile of this confederacy shall be "The

United States of America."

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

Article IV. The better to secure and perpetuate mutal friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State of the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of and species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdictions between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all of the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the offices and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the United States in Congress assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, full and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness thereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

Document 2. Northwest Ordinance

. . . *Be it ordained by the authority aforesaid,* That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: Which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject however to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the general assembly: *Provided,* That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which, the number and proportion of representatives shall be regulated by the legislature:

Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided also,* That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; and three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the Governor. As soon as legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus,* and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide,* and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them . . .

ART. 5. There shall be formed in the said territory, not less than three nor more than five States . . . . And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided,* the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid . . .

Document 3. George Washington to David Humphreys (22 October 1786)

. . . I am pleased with the choice of Delegates which was made at your State meeting; and wish the Representatives of all the State societies may appear at the Genl. Meeting, with as good dispositions as I believe they will. It gives me pleasure also to hear that so many Officers are sent to your Assembly: I am persuaded they will carry with them more liberality of sentiments, than is to be found among any other class of Citizens. The speech of our friend Cobb was noble, worthy of a patriot and himself; as was the conduct of Genl. Sullivan. But for God's sake tell me what is the cause of all these commotions [Shays' Rebellion]: do they proceed from licentiousness, British-influence disseminated by the tories, or real grievances which admit of redress? If the latter, why were they delayed 'till the public mind had become so much agitated? If the former why are not the powers of Government tried at once? It is as well to be without, as not to live under their exercise. Commotions of this sort, like snow-balls, gather strength as they roll, if there is no opposition in the way to divide and crumble them. Do write me fully, I beseech you, on these matters; not only with respect to facts, but as to opinions of their tendency and issue. I am mortified beyond expression that in the moment of our acknowledged independence we should by our conduct verify the predictions of our transatlantic foe, and render ourselves ridiculous and contemptible in the eyes of all Europe. My health (I thank you for the enquiry) is restored to me; and all under this roof join me in most affectionate regards, and in regretting that your letter has held out no idea of visiting it again this winter, as you gave us hope of doing when you left us. To all the gentn. of my acquaintance who may happen to be in your circle, I beg to be remembered with sincere regard. . . .

Document 4. Proceedings of the State Commissioners at Annapolis, Md. (11-14 September 1786)

Annapolis in the State of Maryland September 11th. 1786.

At a meeting of Commissioners from the States of New York, New Jersey Pensylvania, Delaware and Virginia— . . .

Mr. Dickinson was unanimously elected Chairman.

The Commissioners produced their Credentials from their respective States: which were read.

After a full communication of Sentiments, and deliberate consideration of what would be proper to be done by the Commissioners now assembled it was unanimously agreed, that a Committee be appointed to prepare a draft of a Report to be made to the States having Commissioners—attending at this meeting— . . .

Thursday Septr. 14th. 1786

Met agreeable to Adjournment.

The meeting resumed the Consideration of the draft of the Report and after some time spent therein, and amendments made, the same was unanimously agreed to, and is as follows, to wit.

To the Honorable, the Legislatures of Virginia, Delaware Pennsylvania, New Jersey, and New York—

The Commissioners from the said States, respectively assembled at Annapolis, humbly beg leave to report.

That, pursuant to their several appointments, they met at Annapolis in the State of Maryland, on the eleventh day of September Instant, and having proceeded to a Communication of their powers; they found that the States of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorised their respective Commissioners "to meet such Commissioners as were, or might be, appointed by the other States in the Union, at such time and place, as should be agreed upon by the said Commissioners to take into consideration the trade and Commerce of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several States, such as Act, relative to this great object, as when unanimously ratified by them would enable the United States in Congress assembled effectually to provide for the same."

That the State of Delaware, had given similar powers to their Commissioners, with this difference only that the Act to be framed, in virtue of those powers, is required to be reported "to the United States in Congress Assembled, to be agreed to by them, and confirmed by the Legislatures of every State."

That the State of New Jersey had enlarged the object of their Appointment, empowering their Commissioners, "to consider how far an uniform system in their commercial regulations and *other important matters,* might be necessary to the common interest and permanent harmony of the several States," and to report such an Act on the subject, as when ratified by them "would enable the United States in Congress—Assembled, effectually to provide for the exigencies of the Union."

That appointments of Commissioners have also been made by the States of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom however have attended; but that no information has been received by your Commissioners of any appointment having been made by the States of Connecticut, Maryland, South Carolina or Georgia.

That the express terms of the powers to your Commissioners supposing a deputation from all the States, Your Commissioners did not conceive it advisable to proceed on the business of their mission, under the Circumstance of so partial and defective a representation.

Deeply impressed however with the magnitude and importance of the object confided to them on this occasion, Your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish. that speedy measures are taken, to effect a general meeting, of the States, in a future Convention, for the same, and such other purposes, as the situation of public affairs, may be found to require.

If in expressing this wish or in intimating any other sentiment, Your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct, dictated by an anxiety for the welfare, of the United States, will not fail to receive an indulgent construction.

In this persuasion, Your Commissioners submit an opinion, that the Idea of extending the powers of their Deputies, to other objects than those of Commerce which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that a future Convention, they are the more naturally led to this conclusion, as in the course of their reflections on the subject, they have been induced to think, that the power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the foederal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits may require a correspondent adjustment of other parts of the Foederal System.

That there are important defects in the system of the Foederal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probable, from the embarrassments which characterise the present State of our national affairs—foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode your Commissioners are of opinion,—that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations which will occur, without being particularised.

Your Commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future Convention with more enlarged powers, is founded; as it would be and useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are however of a nature so serious, as, in the view of your Commissioners to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

Under this impression, Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may esentially tend to advance the interests of the union, if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May, next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Foederal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress Assembled, as when agreed to, by them, and afterwards confirmed by the Legislatures of every State will effectually provide for the same.

Though your Commissioners could not with propriety—address these observations and sentiments to any but the states they have the honor to Represent, they have nevertheless concluded from motives of respect, to transmit Copies of this report to the United States in Congress assembled, and to the executives of the other States.

By order of the Commissioners

Dated at Annapolis
September 14th, 1786

Document 5. The Virginia Plan for Union

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare."

2. Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch of the National Legislature ought to be elected by the people of the several States every _____ for the term of _____; to be of the age of _____ years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the first branch, during the term of service, and for the space of _____ after its expiration; to be incapable of reelection for the space of _____ after the expiration of their term of service, and to be subject to recall.

5. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of _____ years at least; to hold their offices for a term sufficient to ensure their independency, to receive liberal stipends, by which they may be compensated for the devotion of their time to public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of _____ after the expiration thereof.

6. Resolved that each branch ought to possess the right of originating Acts; that the National Legislature ought to be impowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.

7. Resd. that a National Executive be instituted, to be chosen by the National Legislature for the term of _____ years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase of diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.

8. Resd. that the Executive and a convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by _____ of the members of each branch.

9. Resd. that a National Judiciary be established to consist of one of more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office, at the time of such increase or diminution. that the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National officers, and questions which may involve the national peace and harmony.

10. Resolvd. that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of Government & Territory or otherwise, with the consent of a number of voices in the National legislature less than the whole.

11. Resd. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State.

12. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

13. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Resd. that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

15. Resd. that the amendments which shall be offered to the Confederation, by the Convention ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly or assemblies of Representatives, recommended by the several Legislatures to be expressly chosen by the people, to consider & decide thereon.

Document 6. The New Jersey Plan for Union

1. Resd. that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.

2. Resd. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient, to make rules & regulations for the collection thereof, and the same from time to time, to alter & amend in such manner as they shall think proper: to pass Acts for the regulation of trade & commerce as well with foreign nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciarys of the State in which any offence contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the superior common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgments, to an appeal to the Judiciary of the U. States.

3. Resd. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Congs. be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs. shall be exercised without the consent of at least _____ States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

4. Resd. that the U. States in Congs. be authorized to elect a federal Executive to consist of _____ persons, to continue in office for the term of _____ years, to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for _____ years thereafter; to be ineligible a second time, & removeable by Congs. on application by a majority of the Executives of the several States; that the Executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military Operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General, or in other capacity.

5. Resd. that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour, to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution, that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the Acts for regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their time of service, or for _____ thereafter.

6. Resd. that all acts of the U. States in Congs. made by virtue & in pursuance of the powers hereby & by the articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective

States, so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the Individual States to the contrary notwithstanding; and that if any State, or any body of men in any State shall oppose or prevent ye. carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts, or an Observance of such Treaties.

7. Resd. that provision be made for the admission of new States into the Union.

8. Resd. the rule for naturalization ought to be the same in every State.

9. Resd. that a Citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a Citizen of the State in which the offence was committed.

Document 7. Debate on Representation (31 May 1787)

MR. SHERMAN opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

MR. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Massachusetts for the reduction of salaries and the attack made on that of the Governor though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levolling spirit.

MR. MASON, argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons—It ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virginia different interests and views arising from difference of produce, of habits etc., etc. He admitted that we had been too democratic but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

MR. WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the National Legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceded much more from the officers of the States, than from the people at large.

MR. MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the first—the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive and judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

MR. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shown that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualfied that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State Legislatures should be bound to choose.

Document 8. Debate on Executive Power (1 June 1787)

MR. PINCKNEY was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace and war and etc., etc., which would render the Executive a monarchy, of the worst kind, to wit an elective one.

MR. WILSON moved that the Executive consist of a single person. **Mr. C. PINCKNEY** seconded the motion, so as to read "that a National Executive to consist of a single person, be instituted."

A considerable pause ensuing and the Chairman asking if he should put the question, **DR. FRANKLIN** observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.

MR. RUTLEDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, though he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

MR. SHERMAN said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depository of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number right not be fixed, but that the Legislature should be at liberty to appoint one or more as experience might dictate.

MR. WILSON preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war and peace etc., etc. The only powers he conceived strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.

MR. GERRY favored the policy of annexing a Council to the Executive in order to give weight and inspire confidence.

MR. RANDOLPH strenuously opposed a unity in the Executive magistracy. He regarded it as the fetus of monarchy. We had he said no motive to be governed by the British Government as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixed genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, despatch and responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

MR. WILSON said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.

Document 9. Debate on Federalism (21 June 1787)

DR. JOHNSON. On a comparison of the two plans which had been proposed from Virginia and New Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from Virginia did not profess to destroy this individuality altogether, but was charged with such a tendency. One Gentleman alone (Colonel Hamilton) in his animadversions on the plan of New Jersey, boldly and decisively contended for an abolition of the State Governments. Mr. Wilson and the gentlemen from Virginia who also were adversaries of the plan of New Jersey held a different language. They wished to leave the States in possession of a considerable, though a subordinate jurisdiction. They had not yet however shown how this could consist with, or be secured against the general sovereignty and jurisdiction, which they proposed to give to the national Government. If this could be shown in such a manner as to satisfy the patrons of the New Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shown their objections would have their full force. He wished it therefore to be well considered whether in case the States, as was proposed, shoould retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the General Government, without giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils.

MR. WILSON'S respect for Dr. Johnson, added to the importance of the subject led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked how the General Government and individuality of the particular States could be reconciled to each other; and how the latter could be secured against the former? Might it not, on the other side be asked how the former was to be secured against the latter? It was generally admitted that a jealousy and [rivalry] would be felt between the General and particular Governments. As the plan now stood, though indeed contrary to this opinion, one branch of the General Government (the Senate or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the General Government would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the General Government of defending itself by having an appointment of some one constituent branch of the State Government. If a security be necessary on one side, it would seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States from the General Government. In case a combination should be made by the large ones it would produce a general alarm among the rest; and the project would be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any proposition in the National Legislature to encroach on the State Legislatures, he conceived a general alarm would take place in the National Legislature itself, that it would communicate itself to the State Legislatures, and would finally spread among the people at large. The General Government will be as ready to preserve the rights of the States as the latter are to preserve the rights of individuals; all the members of the former, having a common interest, as representatives of all the people of the latter, to leave the State Governments in possession of what the people wish them to retain. He could not discover, therefore any danger whatever on the side from which it had been apprehended. On the contrary, he conceived that in spite of every precaution the general Government would be in perpetual danger of encroachments from the State Governments.

MR. MADISON was of opinion that there was 1. less danger of encroachment from the General Government than from the State Government 2. That the mischief from encroachments would be less fatal if made by the former, than if made by the latter 1. All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than to usurpations of the federal head. Our own experience had fully illustrated this tendency.—But it will be said that the proposed change in the principles and form of the Union will vary the tendency; that the General Governments will have real and greater powers, and will be derived in one branch at least from the people, not from the Government of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the General Legislature, and the States reduced to corporations dependent on the General Legislature; Why should it follow that the General Government would take from the States any branch of their power as far as its operation was beneficial, and its continuance desirable to the people? In some of the States, particularly in Connecticut, all the Townships are incorporated, and have a certain limited jurisdiction. Have the Representatives of the people of the Townships in the Legislature of the State ever endeavored to despoil the Townships of any part of their local authority? As far as this local authority is convenient to the people they are attached to it; and their representatives chosen by and amenable to them naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a General Government to State Governments is parallel 2. Guards were more necessary against encroachments of the State Governments on the General Government than of the latter on the former. The great objection made against an abolition of the State Government was that the General Government could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not against the probable abuse of the general power, but against the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable it could not in this view be improper, as far as it would be impracticable, the conveniency of the General Government itself would occur with that of the people in the maintenance of subordinate Governments. Were it practicable for the General Government to extend its care to every requisite object without the cooperation of the State Governments the people would not be less free as members of one great Republic than as members of thirteen small ones. A Citizen of Delaware was not more free than a Citizen of Virginia; nor would either be more free than a Citizen of America. Supposing therefore a tendency in the General Government to absorb the State Governments no fatal consequence could result. Taking the reverse of the supposition, that a tendency should be left in the State Governments towards an independence on the General Government and the gloomy consequences need not be pointed out. The imagination of them, must have suggested to the States the experiment we are now making to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

Document 10. Debate on the Judiciary, the Veto, and Separation of Powers (17 and 19 July 1787)

MR. WILSON . . . This proposition had been before made and failed: but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.

MR. MADISON seconded the motion.

MR. GORHAM did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on Judges for their opinions.

MR. ELLSWORTH approved heartily of the motion. The aid of the Judges will give more wisdom and firmness to the Executive. They will possess a systematic and accurate knowledge of the Laws, which the Executive can not be expected always to possess. The law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

MR. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary department by giving it an additional opportunity of defending itself against Legislative encroachments; It would be useful to the Executive, by inspiring additional confidence and firmness in exerting the revisionary power: It would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity and technical propriety in the laws, qualities peculiarly necessary; and yet shamefully wanting in our republican Codes. It would moreover be useful to the Community at large as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

MR. MASON said he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the Revisionary power would be of little avail.

MR. GERRY did not expect to see this point which had undergone full discussion, again revived. The object he conceived of the Revisionary power was merely to secure the Executive department against legislative encroachment. The Executive therefore who will best know and be ready to defend his rights ought alone to have the defence of them. The motion was liable to strong objections. It was combining and mixing together the Legislative and the other departments. It was establishing an improper coalition between the Executive and Judiciary departments. It was making Statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights and interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. A better expedient for correcting the laws, would be to appoint as had been done in Pennsylvania a person or persons of proper skill, to draw bills for the Legislature.

MR. STRONG thought with Mr. Gerry that the power of making ought to be kept distinct from that of expounding, the Laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken, in framing the laws.

MR. GOUVERNEUR MORRIS. Some check being necessary on the Legislature, the question is in what hands it should be lodged. On one side it was contended that the Executive alone ought to exercise it. He did not think that an Executive appointed for 6 years, and impeachable whilst in office would be a very effectual check. On the other side it was urged that he ought to be reinforced by the Judiciary department. Against this it was objected that Expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the Judges in England had a great share in the Legislation. They are consulted in difficult and doubtful cases. They may be and some of them are members of the Legislature. They are or may be members of the privy Council, and can there advise the Executive as they will do with us if the motion succeeds. The influence of English Judges may have in the latter capacity in strengthening the Executive check can not be ascertained, as the King by his influence in a manner dictates the laws. There is one difference in the two Cases however which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives and such powerful means of defending them that he will never yield any part of them. The interest of our Executive is so inconsiderable and so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting incroachments. He was extremely apprehensive that the auxiliary firmness and weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations than from any other source. It had been said that the Legislature ought to be relied on as the proper Guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed or not. On the latter supposition no check will be wanted. On the former a strong check will be necessary. And this is the proper supposition. Emissions of paper money, largeness to the people—a remission of debts and similar measures, will at some times be popular, and will be pushed for that reason. At other times such measures will coincide with the interests of the Legislature themselves, and that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

MR. L. MARTIN considered the association of the Judges with the Executive as a dangerous innovation; as well as one which could not produce the particular advantage expected from it. A knowledge of Mankind, and of Legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the Constitutionality of laws, that point will come before the Judges in their proper official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the Legislature. Besides in what mode and proportion are they to vote in the Council of Revisions?

MR. MADISON could not discover in the proposed association of the Judges with the Executive in the Revisionary check on the Legislature any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary he thought it an auxiliary precaution in favor of the maxim. If a Constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that is necessary to introduce such a balance of powers and interests, as will guarantee the provisions on paper. Instead therefore of contenting ourselves with laying down the Theory in the Constitution that each department ought to be separate and distinct, it was proposed to add a defensive power to each which should maintain the Theory in practice. In so doing we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination of laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which has been universally regarded as calculated for the preservation of the whole. The objection against a union of the Judiciary and Executive branches in the revision of the laws, had either no foundation or was not carried far enough. If such a Union was an improper mixture of powers, or such a Judiciary check on the laws, was inconsistent with the Theory of a free Constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

COLONEL MASON observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It had been said [by Mr. L. Martin] that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit of considering laws in their true principles, and in their consequences.

Document 11. Debate on Slavery (21 and 22 August 1787)

MR. L. MARTIN proposed to vary the Sect: 4. art VII. so as to allow a prohibition or tax on the importation of slaves. 1. as five slaves are to be counted as 3 free men in the apportionment of Representives; such a clause would leave an encouragement to this trafic. 2. slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable. 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

MR. RUTLEDGE did not see how the importation of slaves could be encouraged by this Section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them.—Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.

MR. ELLSWORTH was for leaving the clause as it stands. Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one . . . .

MR. PINCKNEY. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of the Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject. S. Carolina may perhaps by degrees do of herself what is wished, as Virginia and Maryland have already done.

MR. SHERMAN was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of Slavery seemed to be going on in the United States and that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatching its business.

COLONEL MASON. This infernal traffic originated in the avarice of British Merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia he said had already prohibited the importation of slaves expressly. North Carolina had done the same and Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands, and will fill that Country with slaves if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich and strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes and effects providence punishes national sins, by national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the General Government should have power to prevent the increase of slavery.

MR. ELLSWORTH. As he had never owned a slave could not judge of the effects of slavery on character: He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country.—As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

MR. PINCKNEY. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome and other ancient States; the sanction given by France, England, Holland and other modern States. In all ages one half of mankind have been slaves. If the Southern States were let alone they will probably of themselves stop importations. He would himself as a Citizen of South Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution.

GENERAL PINCKNEY declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their Constitutents. South Carolina and Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to South Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more of revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

MR. BALDWIN had conceived national objects alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a General Government to be the pursuit of the central States who wished to have a vortex for every thing—that her distance would preclude her from equal advantage—and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

MR. WILSON observed that if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to Unite because the importation might be prohibited. As the Section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

MR. GERRY thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

MR. DICKINSON considered it as inadmissible on every principle of honor and safety that the importation of slaves should be authorised to the States by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Government not to the States particularly interested. If England and France permit slavery, slaves are at the same time excluded from both these Kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southern States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the General Government.

MR. WILLIAMSON stated the law of North Carolina on the subject, to wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa, £10 on each from elsewhere, and £50 on each from a State licensing manumission. He thought the Southern States could not be members of the Union if the clause should be rejected, and that it was wrong to force any thing down, not absolutely necessary, and which any State must disagree to.

MR. KING thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great and equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and middle States.

MR. LANGDON was strenuous for giving the power to the General Government. He could not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

GENERAL PINCKNEY thought himself bound to declare candidly that he did not think South Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right and which would remove one difficulty that had been started.

MR. RUTLEDGE. If the Convention thinks that North Carolina, South Carolina and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest . . . .

Document 12. Signing the Constitution (17 September 1787)

MR. FRANKLIN: Mr. President, I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in

Religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant, in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with no body but myself, that's always in the right—*Il n'y a que moi qui a toujours raison*."

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain, may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom an integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

On the whole, Sir, I can not help expressing a wish that every member of the convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.—

He then moved that the Constitution be signed by the members and offered the following as a convenient form viz. "Done in Convention by the unanimous consent of *the States* present the seventeenth of September etc.—In Witness whereof we have hereunto subscribed our names."

This ambiguous form had been drawn up by Mr. G. Morris in order to gain the dissenting members, and put into the hands of Dr. Franklin that it might have the better chance of success.

MR. GORHAM said if it was not too late he could wish, for the purpose of lessening objections to the Constitution, that the clause declaring "the number of Representatives shall not exceed one for every forty thousand" which had produced so much discussion, might be yet reconsidered, in order to strike out 40,000 and insert "thirty thousand." This would not he remarked establish that as an absolute rule, but only give Congress a greater latitude which could not be thought unreasonable.

MR. KING and **MR. CARROL** seconded and supported the ideas of Mr. Gorham.

When the PRESIDENT [Washington] rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered by many members of the Convention an insufficient security for the right and interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted.*

No opposition was made to the proposition of Mr. Gorham and it was agreed to unanimously.

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to all the States answering ay.

MR. RANDOLPH then rose and with an allusion to the observations of Dr. Franklin apologized for his refusing to sign the constitution notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth. He said however that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

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*[This was the only occasion on which the President entered at all into the discussions of the Convention.]

MR. GOUVERNEUR MORRIS said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor and by that determination he should abide. The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a general anarchy will be the alternative. He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.

MR. WILLIAMSON suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would he found be satisfactory to some members who disliked the constitution. For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.

MR. HAMILTON expressed his anxiety that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other.

MR. BLOUNT said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would without committing himself attest the fact that the plan was the unanimous act of the States in Convention.

DR. FRANKLIN expressed his fears from what Mr. Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that when drawing up that paper he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He professed a high sense of obligation to Mr. Randolph for having brought forward the plan in the first instance, and for the assistance he had given in its progress, and hoped that he would yet lay aside his objections, and by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

MR. RANDOLPH could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him. He repeated that in refusing to sign the Constitution, he took a step which might be the most awful of his life, but it was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated also his persuasion, that the holding out this plan with a final alternative to the people, of accepting or rejecting it in toto, would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it.

MR. GERRY described the painful feelings of his situation, and the embarrassment under which he rose to offer any further observations on the subject which had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound as he was disposed to treat it with the respect due to the Act of the Convention. He hoped he should not violate that respect in declaring on this occasion his fears that a Civil war may result from the present crisis of the U.S. In Massachusetts, particularly he saw the danger of this calamitous event—In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it has been passed by the Convention, he was persuaded it would have a contrary effect. He could not therefore by signing the Constitution pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Dr. Franklin, he could not he said but view them as leveled at himself and the other gentlemen who meant not to sign; . . .

The members then proceeded to sign the instruments.

Whilst the last members were signing it DR. FRANKLIN looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

The Constitution being signed by all the members except Mr. Randolph, Mr. Mason, and Mr. Gerry who declined giving it the sanction of their names, the Convention dissolved itself by an Adjournment sine die—

Document 13. Washington to David Humphrey (10 December 1787)

. . . The Constitution that is submitted is not free from imperfections, but there as few radical defects in it as could well be expected considering the heterogenious mass of which the Convention was composed and the diversity of interests that are to be attended to. As a Constitutional door is open for future amendments and alterations, I think it would be wise in the People to accept what is offered to them and I wish it may be by as great a majority of them as it was by that of the Convention; but this is hardly to be expected because the importance and sinister views of too many characters, will be affected by the change. Much will depend however upon literary abilities, and the recommendation of it by good pens should be *openly*, I mean, publickly afforded in the Gazettes. Go matters however as they may, I shall have the consolation to reflect that no objects but the public good, and that peace and harmony which I wished to see prevail in the Convention, obtruded even for a moment in my bosom during the whole Session long as it was. what reception this State will give to the proceedings in all its extent of territory, is more than I can inform you of; in these parts it is advocated beyond by expectation; the great opposition (if great there should be) will come from the Southern and Western Counties from whence I have not as yet, received any accts. that are to be depended on. . . .

Document 14. The Constitution of the United States of America

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of

President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsiderations two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be considered, and if approved by two thirds of that House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sunday excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptices throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another, nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and reprisal, coin Money; emit Bills of Credit, make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Product of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the

Certificates, and the Votes shall then be counted. The Person having the greatest number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Office shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of the President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreements between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appelate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws, thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on Application of the Legislatures of two thirds of the several States, shall call a Convention of proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this constitution when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States.

Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanmimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In witness thereof We have hereunto subscribed our Names,

G°: WASHINGTON—Presid'
and deputy from Virginia

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
W^{m} Sam^{l} Johnson
Roger Sherman

New York
Alexander Hamilton

New Jersey
Wil: Livingston
David A. Brearley
W^{m} Paterson
Jona: Dayton

Pennsylvania
B. Franklin
Thomas Mifflin
Rob^{t} Morris
Geo. Clymer
Tho^{s}. FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris

Delaware
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland
James McHenry
Dan of S^{t} Tho^{s} Jenifer
Dan^{l} Carroll

Virginia
John Blair—
James Madison Jr.

North Carolina
W^{m}. Blount
Rich^{d} Dobbs Spaight.
Hu Williamson

South Carolina
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler.

Georgia
William Few
Abr Baldwin

Document 15. *The Federalist* No. 10 (Madison)

Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail therefore to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice and confusion introduced into the public councils, have in truth been the mortal diseases under which popular governments have every where perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American Constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side as was wished and expected. Complaints are every where heard from our most considerate and virtuous citizens, usually the friends of public and private faith, and of public and personal liberty; that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party; but by the superior force of an interested and over-bearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found indeed, on a candid review of our situation, that some of the distresses under which we labor, have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controling its effects.

There are again two methods of removing the causes of faction: the one by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it is worse than the disease. Liberty is to faction, what air is to fire, an ailment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man countinues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of Government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results: and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties. . . .

The inference to which we are brought is, that the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote: It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure Democracy, by which I mean, a Society, consisting of a small number of citizens, who assemble and administer the Government in person, can admit of no cure for the mischiefs of faction. A common passion of interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of Government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronized this species of Government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A Republic, by which I mean a Government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure Democracy, and we shall comprehend both the nature of the cure, and the efficacy which it must derive from the Union.

The two great points of difference between a Democracy and a Republic are, first, the delegation of the Government, in the latter, to a small number of citizens elected by the rest: secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose partriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves convened for the purpose. On the other hand, the effect may be inverted, Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is, whether small or extensive Republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place it is to be remarked that however small the Republic may be, the Representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of Representatives in the two cases, not being in proportion to that of the Constituents, and being proportionally greatest in the small Republic, it follows, that if the proportion of fit characters, be not less, in the large than in the small Republic, the former will present a greater option, and consequently a greater probability of a fit choice. . . .

Document 16. *The Federalist* No. 23 (Hamilton)

The necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union, is the point, at the examination of which we are now arrived.

This enquiry will naturally divide itself into three branches—the objects to be provided for by a Foederal Government—the quantity of power necessary to the accomplishment of those objects—the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

The principal purposes to be answered by Union are these—The common defence of the members—the preservation of the public peace as well against internal convulsions as external attacks—the regulation of commerce with other nations and between the States—the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the care of the common defence are these—to raise armies—to build and equip fleets—to prescribe rules for the government of both—to direct their operations—to provide for their support. These powers ought to exist without limitation: *Because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent & variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be co-extensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils, which are appointed to preside over the common defence.

This is one of those truths, which to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal. The *means* ought to be proportioned to the *end;* the persons, from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.

Whether there ought to be a Foederal Government intrusted with the care of the common defence, is a question in the first instance open to discussion; but the moment it is decided in the affirmative, it will follow, that that government ought to be cloathed with all the powers requisite to the complete execution of its trust. And unless it can be shewn, that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority, which is to provide for the defence and protection of the community, in any matter essential to its efficacy; that is, in any matter essential to the *formation, direction* or *support* of the NATIONAL FORCES.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money—to govern the army and navy—to direct their operations. As their requisitions were made constitutionally binding upon the States, who are in fact under the most solemn obligations to furnish the supplies required of them, the intention evidently was, that the United States should command whatever resources were by them judged requisite to "the common defence and general welfare." It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members of the Foederal Head.

The experiment has, however demonstrated, that this expectation was ill founded and illusory; and the observations made under the last head, will, I imagine, have sufficed to convince the impartial and discerning, that there is an absolute necessity for an entire change in the first principles of the system: That if we are in earnest about giving the Union energy and duration, we must abandon the vain project of legislating upon the States in their collective capacities: We must extend the laws of the Foederal Government to the individual citizens of America: We must discard the fallacious scheme of quotas and requisitions, as equally impracticable and unjust. The result from all this is, that the Union ought to be invested with full power to levy troops; to build and equip fleets, and to raise the revenues, which will be required for the formation and support of an army and navy, in the customary and ordinary modes practiced in other governments. . . .

Every view we may take of the subject, as candid

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enquirers after truth, will serve to convince us, that it is both unwise and dangerous to deny the Foederal Government an unconfined authority, as to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people, to see that it be modelled in such a manner, as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be offered to our consideration, should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the Constitution of which renders it unfit to be trusted with all the powers, which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS, wherever THESE can with propriety be confided, the co-incident powers may safely accompany them. This the true result of all just reasoning upon the subject. And the adversaries of the plan, promulgated by the Convention, ought to have confined themselves to showing that the internal structure of the proposed government, was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations, and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS OF Foederal administration, or in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to shew that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government, in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate Confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face of confiding to a government, the direction of the most essential national interests, without daring to trust it with the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative. . . .

Document 17. *The Federalist* No. 41 (Madison)

THE Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum of quantity of power which it vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government and the distribution of this power among its several branches.

Under the first view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States?

Is the aggregate power of the general government greater than ought to have been vested in it? This is the first question.

It cannot have escaped those who have attended with candor to the arguments employed against the extensive powers of the government that the authors of them have very little considered how far these powers were necessary means of attaining a necessary end. They have chosen rather to dwell on the inconveniences which must be unavoidably blended with all political advantages; and on the possible abuses which must be incident to every power of trust of which a beneficial use can be made. This method of handling the subject cannot impose on the good sense of the people of America. It may display the subtlety of the writer; it may open a boundless field for rhetoric and declamation; it may inflame the passions of the unthinking and may confirm the prejudices of the misthinking: but cool and candid people will at once reflect that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the GREATER, not the PERFECT, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.

That we may form a correct judgement on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: Security against foreign danger; . . .

The powers falling within the first class are those of declaring war and granting letters of marque; of providing armies and fleets; of regulating and calling forth the militia; of levying and borrowing money.

Security against foreign danger is one of the primitive objects of civil society. It is an avowed and essential object of the American Union. The powers requisite for attaining it must be effectually confided to the federal councils.

Is the power of declaring war necessary? No man will answer this question in the negative. It would be superfluous, therefore, to enter into a proof of the affirmative. The existing Confederation establishes this power in the most ample form.

Is the power of raising armies and equipping fleets necessary? This is involved in the foregoing power. It is involved in the power of self-defense.

But was it necessary to give an INDEFINITE

POWER of raising TROOPS, as well as providing fleets; and of maintaining both in PEACE as well as in WAR?

The answer to these questions has been too far anticipated in another place to admit an extensive discussion of them in this place. The answer indeed seems to be so obvious and conclusive as scarcely to justify such a discussion in any place. With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? If a federal Constitution could chain the ambition of set bounds to the exertions of all other nations, then indeed might it prudently chain the discretion of its own government and set bounds to the exertions of its own safety. . . .

The clearest marks of this prudence are stamped on the proposed Constitution. The Union itself, which it cements and secures, destroys every pretext for a military establishment which could be dangerous. America united, with a handful of troops, or without a single soldier, exhibits a more forbidding posture to foreign ambition than America disunited, with a hundred thousand veterans ready for combat. It was remarked on a former occasion that the want of this pretext had saved the liberties of one nation in Europe. Being rendered by her insular situation and her maritime resources impregnable to the armies of her neighbors, the rulers of Great Britain have never been able, by real or artificial dangers, to cheat the public into an extensive peace establishment. The distance to the United States from the powerful nations of the world gives them the same happy security. A dangerous establishment can never be necessary or plausible, so long as they continue a united people. But let it never for a moment be forgotten that they are indebted for this advantage to their Union alone. The moment of its dissolution will be the date of a new order of things. The fears of the weaker, or the ambition of the stronger States, or Confederacies, will set the same example in the new as Charles VII did in the old world. The example will be followed here from the same motives which produced universal imitation there. Instead of deriving from our situation the precious advantage which Great Britain has derived from hers, the face of America will be but a copy of that of the continent of Europe. It will present liberty everywhere crushed between standing armies and perpetual taxes. The fortunes of disunited America will be even more disastrous than those of Europe. The sources of evil in the latter are confined to her own limits. No superior powers of another quarter of the globe intrigue among her rival nations, inflame their mutual animosities, and render them the instruments of foreign ambition, jealousy, and revenge. In America the miseries springing from her internal jealousies, contentions, and wars would form a part only of her lot. A plentiful addition of evils would have their source in that relation in which Europe stands to this quarter of the earth, and which no other quarter of the earth bears to Europe.

This picture of the consequences of disunion cannot be too highly colored, or too often exhibited. Every man who loves peace, every man who loves his country, every man who loves liberty ought to have it ever before his eyes that he may cherish in his heart a due attachment to the Union of America and be able to set a due value on the means of preserving it. . . .

Document 18. *The Federalist* No. 51 (Madison)

. . . In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels, having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expence, would attend the execution of it. Some deviations therefore from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualificiations being essential in the members, the primary consideration ought to be to select that mode of choice, which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to controul the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to controul the governed; and in the first place, oblige it to controul itself. A dependence on the people is no doubt the primary controul on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual, may be a centinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

But it is not possible to give to each department an equal power of self defence. In republican government the legislative authority, necessarily, predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative, on the legislature, appears at first view to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe, nor alone sufficient. On ordinary occasions, it might not be exerted with the requisite firmness; and on extraordinary occasions, it might be perfidiously abused. May not this defect of an absolute negative be supplied, by some qualified connection between this weaker department, and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they are applied as a criterion, to the several state constitutions, and to the federal constitution, it will be found, that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are moreover two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself.

Second. It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self appointed authority. This at best is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests, of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States, Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority. . . .

Document 19. *The Federalist* No. 70 (Hamilton)

There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks: It is not less essential to the steady administration of the laws, to the protection of property against those irregular and high handed combinations, which sometimes interrupt the ordinary course of justice, to the security of liberty against the enterprises and assaults of ambition, of faction and of anarchy. Every man the least conversant in Roman story knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals, who aspired to the tyranny, and the seditions of whole classes of the community, whose conduct threatened the existence of all government, as against the invasions of external enemies, who menaced the conquest and destruction of Rome.

There can be no need however to multiply arguments or examples on this head. A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: And a government ill executed, whatever it may be in theory, must be in practice a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive; it will only remian to inquire, what are the ingredients which constitute this energy—how far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterise the plan, which has been reported by the convention?

The ingredients, which constitute energy in the executive, are first unity, secondly duration, thirdly an adequate provision of its support, fourthly competent powers.

The circumstances which constitute safety in the republican sense are, Ist. a due dependence on the people, secondly a due responsibility. . . .

The experience of other nations will afford little instruction on this head. As far however as it teaches any thing, it teaches us not to be inamoured of plurality in the executive. We have seen that the Achaeans on an experiment of two Praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissentions between the consuls, and between the military tribunes, who were at times substituted to the consuls. But it gives us no specimens of any peculiar advantages derived to the state, from the circumstance of the plurality of those magistrates. That the dissentions between them were not more frequent, or more fatal, is matter of astonishment; until we advert to the singular position in which the republic was almost continually placed and to the prudent policy pointed out by the circumstances of the state, and pursued by the consuls, of making a division of the government between them. The Patricians engaged in a perpetual struggle with the Plebians for the preservation of their antient authorities and dignities; the consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in defence of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the consuls to divide the administration between themselves by lot; one of them remaining at Rome to govern the city and its environs; the other taking the command in the more distant provinces. This expedient must no doubt have had great influence in preventing those collisions and rivalships, which might otherwise have embroiled the peace of the republic. . . .

But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan, is that it tends to conceal faults, and destroy responsibility. Responsibility is of two kinds, to censure and to punishment. The first is the most important of the two; especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted, than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated, that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. . . .

It is evident from these considerations, that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power; first, the restraints of public opinion, which lose their efficacy as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment, in cases which admit of it.

In England the king is a perpetual magistrate; and it is a maxim, which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing therefore can be wiser in that kingdom than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this there would be no responsibility whatever in the executive department; an idea inadmissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct, in the exercise of his office; and may observe or disregard the council given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behaviour in office, the reason which in the British consitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great-Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate; which serves in some degree as a hostage to the national justice for his good behavior. In the American republic it would serve to destroy, or would greatly diminish the intended and necessary responsibility of the chief magistrate himself . . . .

Document 20. *The Federalist* No. 78 (Hamilton)

We proceed now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged; as the propriety of the institution in the abstract is not disputed: The only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points therefore our observations shall be confined.

The manner of constituting it seems to embrace these several objects—1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges: This is the same with that of appointing the officers of the union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places: This chiefly concerns their duration in office; the provisions for their support; and the precautions for their responsibility.

According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices *during good behaviour,* which is conformable to the most approved of the state constitutions; and among the rest, to that of this state. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behaviour for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince: In a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestibly that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislative and executive. For I agree that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such an union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches; and that as nothing can contribute so much to its firmness and independence, as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution; and in a great measure as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcileable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the consitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens, that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation: So far as they can by any fair construction be reconciled to each other; reason and law conspire to dictate that this should be done. Where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable, that between the interfering acts of an *equal* authority, that which was the last indication of its will, should have the preference. . . .

If then the courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty.

This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the mean time to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed constitution will never concur with its enemies in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing constitution, would on that account be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body. Until the people have by some solemn and authoritative act annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the constitution, where legislative invasions of it had been instigated by the major voice of the community. . . .

Document 21. George Mason, "Objections to the Constitution of Government Formed by the Convention"

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security. Nor are the people secured even in the Enjoyment of the Benefits of the common-Law: which stands here upon no other Foundation than its having been adopted by the respective Acts forming the Constitutions of the several states. In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People: the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects and Consequences.

The Senate have the Power of altering all Money-Bills, and of originating Appropriations of Moneys and the Sallerys of the Offices of their own Appointment in Conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them.

These with their other great Powers (vizt. their Power in the Appointment of Ambassadors and all public Officers, in making Treaties, and in trying all Impeachments) their Influence upon and Connection with the supreme Executive from these Causes, their Duration of Office, and their being a constant existing Body almost continually sitting, joined with their being one compleat Branch of the Legislature, will destroy any Balance in the Government, and enable them to accomplish what Usurpations they please upon the Rights and Libertys of the People.

The Judiciary of the United States is so constructed and extended, as to absorb and destroy the Judiciarys of the several States; thereby rendering Law as tedious[,] intricate and expensive, and Justice as unattainable, by a great part of the Community, as in England, and enabling the Rich to oppress and ruin the Poor.

The President of the United States has no constitutional Council (a thing unknown in any safe and regular Government) he will therefore be unsupported by proper Information and Advice; and will generally be directed by Minions and Favourites—or He will become a Tool to the Senate—or a Council of State will grow out of the principal Officers of the great Departments; the worst and most dangerous of all Ingredients for such a Council, in a free Country; for they may be induced to join in any dangerous or oppressive Measures, to shelter themselves, and prevent an Inquiry into their own Misconduct in Office; whereas had a constitutional Council been formed (as was proposed) of six Members; vizt. two from the Eastern, two from the Middle, and two from the Southern States, to be appointed by Votes of the States in the House of Representatives, with the same Duration and Rotation of Office as the Senate, the Executive wou'd always have had safe and proper Information and Advice, the President of such a Council might have acted as Vice President of the United States, pro tempore, upon any Vacancy or Disability of the chief Magistrate; and long continued Sessions of the Senate wou'd be in a great Measure have been prevented.

From this fatal Defect of a constitutional Council has arisen the improper Power of the Senate, in the Appointment of public Officers, and the alarming Dependence and Connection between that Branch of the Legislature, and the supreme Executive.

Hence also sprung that unnecessary and dangerous Officer, the Vice President; who for want of other Employment, is made President of the Senate; thereby dangerously blending the executive and legislative Powers; besides always giving to some one of the States an unnecessary and unjust Pre-eminence over the others.

The President of the United States has the unrestrained Power of granting Pardon for Treason; which may be sometimes exercised to screen from Punishment those whom he had secretly instigated to commit the Crime, and thereby prevent a Discovery of his own Guilt.

By declaring all Treaties supreme Laws of the Land, the Executive and the Senate have in many Cases, an exclusive Power of Legislation; which might have been avoided by proper Distinctions with Respect to Treaties, and requiring the Assent of the House of Representatives, where it cou'd be done with Safety.

By requiring only a Majority to make all commercial and navigation Laws, the five Southern States (whose Produce and Circumstances are totally different from that of the eight Northern and Eastern States) will be ruined; for such rigid and premature Regulations may be made, as will enable the Merchants of the Northern and Eastern States not only to demand an exorbitant Freight, but to monopolize the Purchase of the Commodities at their own Price, for many years: to the great Injury of the landed Interest, and Impoverishment of the People: and the Danger is the greater, as the Gain on one Side will be in Proportion to the Loss on the other. Whereas requiring two thirds of the members present in both Houses wou'd have produced mutual moderation, promoted the general Interest, and removed an insuperable Objection to the Adoption of the Government.

Under their own Constitution of the general Clause at the End of the enumerated powers the Congress may grant Monopolies in Trade and Commerce, constitute new Crimes, inflict unusual and severe Punishments, and extend their Powers as far as they shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights.

There is no Declaration of any kind for preserving the Liberty of the Press, the Tryal by Jury in civil Causes; nor against the Danger of standing Armys in time of Peace.

The State Legislatures are restrained from laying Export Duties on their own Produce.

The general Legislature is restrained from prohibiting the further Importation of Slaves for twenty odd Years; tho' such Importations render the United States weaker, more vulnerable, and less capable of Defence.

Both the general Legislature and the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was, or can be a Legislature but must and will make such Laws, when necessity and the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford precedents for other Innovations.

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in its Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in one or the other.

Document 22. "Letter from a Federal Farmer" No. 1

Dear Sir,

. . . It appears to be a plan retaining some federal features; but to be the first important step and to aim strongly to one consolidated government of the United States. It leaves the powers of government, and the representation of the people, so unnaturally divided between the general and state governments, that the operations of our system must be very uncertain. My uniform federal attachments, and the interest I have in the protection of property, and a steady execution of the laws, will convince you, that, if I am under any biass at all, it is in favor of any general system which shall promise those advantages. The instability of our laws increases my wishes for firm and steady government; but then, I can consent to no government, which, in my opinion, is not calculated equally to preserve the rights of all orders of men in the community. My object has been to join with those who have endeavoured to supply the defects in the forms of our governments by a steady and proper administration of them. . . . I am not disposed to unreasonably contend about forms. I know our situation is critical, and it behoves us to make the best of it. A federal government of some sort is necessary. We have suffered the present to languish; and whether the confederation was capable or not originally of answering any valuable purposes, it is now but of little importance. I will pass by the men, and states, who have been particularly instrumental in preparing the way for a change, and, perhaps, for governments not very favourable to the people at large. A constitution is now presented which we may reject, or which we may accept, with or without amendments; and to which point we ought to direct our exertions, is the question. To determine this question, with propriety, we must attentively examine the system itself, and the probable consequences of either step. . . .

The first principal question that occurs, is, whether considering our situation, we ought to precipitate the adoption of the proposed constitution? If we remain cool and temperate, we are in no immediate danger of any commotions; we are in a state of perfect peace, and in no danger of invasions; the state governments are in full exercise of their powers; and our governments answer all present exigencies, except the regulation of trade, securing credit, in some cases, and providing for the interest, in some instances, of the public debts; and whether we adopt a change, three or nine months hence, can make but little odds with the private circumstances of individuals; their happiness and prosperity, after all, depend principally upon their own exertions. We are hardly recovered from a long and distressing war: The farmers, fishmen etc. have not yet fully repaired the waste made by it. Industry and frugality are again assuming their proper station. Private debts are lessened, and public debts incurred by the war have been, by various ways, diminished; and the public lands have now become a productive source for diminishing them much more. I know uneasy men, who wish very much to precipitate, do not admit all these facts; but they are facts well known to all men who are thoroughly informed in the affairs of this country. It must, however, be admitted, that our federal system is defective, and that some of the state governments are not well administered; but, then, we impute to the defects in our governments many evils and embarrassments which are most clearly the result of the late war. . . . It is too often the case in political concerns, that men state facts not as they are, but as they wish them to be; and almost every man, by calling to mind past scenes, will find this to be true. . . .

The present moment discovers a new face in our affairs. Our object has been all along, to reform our federal system, and to strengthen our governments—to establish peace, order and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you, in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected an any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

To have a just idea of the government before us, and to shew that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

The confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, etc, but such was known to be the caution of the states in parting with power, that the vestment, even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of people vague adeas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object. And should an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing unprincipled men, but those parties in the states which have misused their powers.

The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying, ultimately, the state government, and forming one consolidated system, could not have been admitted—a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. September 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation—this was done before the delegates of Massachusetts, and of the other states arrived—still not a word was said about destroying the old constitution, and making a new one—The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation—and, probably, not one man in ten thousand in the United States, till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking—The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected. Virginia made a very respectable appointment, and placed at the head of it the first man in America: In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favourite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states appointed, and though they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters—had they all attended we should now see, I am persuaded a better system presented. . . .

The uneasy and fickle part of the community may be prepared to receive any form of government; but, I presume, the enlightened and substantial part will give any constitution presented for their adoption, a candid and thorough examination; and silence those designing or empty men, who weakly and rashly attempt to precipitate the adoption of a system of so much importance—We shall view the convention with proper respect—and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionably the democratic and aristocratic parts of the community were presented—Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rest solely on its own merits, or be condemned for its own defects.

In the first place, I shall premise, that the plan proposed is a plan of accommodation—and that it is in this way only, and by giving up a part of our opinions, that we can ever expect to obtain a government founded in freedom and compact. This circumstance candid men will always keep in view, in the discussion of this subject.

The plan proposed appears to be partly federal, but principally however, calculated ultimately to make the states one consolidated government.

The first interesting question, therefore suggested, is, how far the states can be consolidated into one entire government on free principles. In considering this question extensive objects are to be taken into view, and important changes in the forms of government to be carefully attended to in all their consequences. The happiness of the people at large must be the great object with every honest statesman, and he will direct every movement to this point. If we are so situated as a people, as not to be able to enjoy equal happiness and advantages under one government, the consolidation of the states cannot be admitted.

There are three different forms of free government under which the United States may exist as one nation; and now is, perhaps, the time to determine to which we will direct our views. 1. distinct republics connected under a federal head. In this case the respective state government must be the principal guardians of the peoples rights, and exclusively regulate their internal police; in them must rest the balance of government. The congress of the states, or federal head, must consist of delegates amenable to, and removeable by the respective states: This congress must have general directing powers; powers to require men and monies of the states; to make treaties, peace and war; to direct the operations of armies, etc. Under this federal modification of government, the powers of congress would be rather advisary or recommendatory than coercive. 2. We may do away the several state governments, and form or consolidate all the states into one entire government, with one executive, one judiciary, and one legislature, consisting of senators and representatives collected from all parts of the union: In this case there would be a compleat consolidation of the states. 3. We may consolidate the states as to certain national objects, and leave them severally distinct independent republics, as to internal police generally. Let the general government consist of an executive, a judiciary, and balanced legislature, and its powers extend exclusively to all foreign concerns, causes arising on the seas to commerce, imports, armies, navies, Indian affairs, peace and war, and to a few internal concerns of the community; to the coin, post-offices, weights and measures, a general plan for the militia, to naturalization, *and, perhaps to bankruptcies,* leaving the internal police of the community, in other respects, exclusively to the state governments; as the administration of justice in all causes arising internally, the laying and collecting of internal taxes, and the forming of the militia according to a general plan prescribed. In this case there would be a compleat consolidation, *quoad* certain objects only.

Touching the first, or federal plan, I do not think much can be said in its favor: The sovereignty of the nation, without coercive and efficient powers to collect the strength of it, cannot always be depended on to answer the purposes of government; and in a congress of representatives of sovereign states, there must necessarily be an unreasonable mixture of powers in the same hands.

As to the second, or compleat consolidating plan, it deserves to be carefully considered at this time, by every American: If it be impracticable, it is a fatal error to model our governments, direcing our views ultimately to it.

The third plan, or partial consolidation, is, in my opinion, the only one that can secure the freedom and happiness of this people. I once had some general ideas that the second plan was practicable, but from long attention, and the proceedings of the convention, I am fully satisfied, that this third plan is the only one we can with safety and propriety proceed upon. Making this the standard to point out, with candor and fairness, the parts of the new constitution which appear to be improper, is my object. The convention appears to have proposed the partial consolidation evidently with a view to collect all powers ultimately, in the United States into one entire government; and from its views in this respect, and from the tenacity of the small states to have an equal vote in the senate, probably originated the greatest defects in the proposed plan.

Independent of the opinions of many great authors, that a free elective government cannot be extended over large territories, a few reflections must evince, that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. The United States contain about a million of square miles, and in half a century will, probably, contain ten millions of people; and from the center to the extremes is about 800 miles.

Before we do away the state governments, or adopt measures that will tend to abolish them, and to consolidate the states into one entire government, several principles should be considered and facts ascertained.

Document 23. Essays of "Brutus" to the Citizens of New York, No. 1

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result. . . .

Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. . . . But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be shut up, and posterity will execrate your memory. . . .

With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and control of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrolable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.—The government then, so far as it extends, is a complete one, and not a confederation. . . . The powers of the general legislature extend to every case that is of the least importance—there is nothing valuable to human nature, nothing dear to free men, but what is within its powers. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. . . .

It might be here shown, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend, not only to a consolidation of the government, but the destruction of liberty—I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the supreme courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite?], and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislature. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be found thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding.—By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support. . . .

Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States. . . .

History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the soveriegn is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldly, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. It is practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not. . . .

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey; but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave; but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers; the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of bayonet—a government of all others the most to be dreaded. . . .

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted. . . .

Document 24. Thomas Jefferson to James Madison (20 December 1787)

I will . . . add a few words on the Constitution proposed by our Convention. I like much the general idea of framing a government which should go on of itself peaceably, without needing continued recurrence to the state legislatures. I like the organization of the government into Legislative, Judiciary and Executive. I like the power given the Legislature to levy taxes; and for that reason solely approve of the greater house being chosen by the people directly. For tho' I think a house chosen by them will be very illy qualified to legislate for the Union, for foreign nations &c. yet this evil does not weigh against the good of preserving inviolate the fundamental principle that the people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great and little states, of the latter to equal, and the former to proportional influence. I am much pleased too with the substitution of the method of voting by persons, instead of that of voting by states: and I like the negative given to the Executive with a third of either house, though I should have liked it better had the Judiciary been associated with that purpose, or invested with a similar and separate power. There are other good things of less moment. I will now add what I do not like. First the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land not by the laws of Nations. To say, as Mr. Wilson does that a bill of rights was not necessary because all is reserved in the case of the general government which is not given, while in the particular ones all is given which is not reserved might do for the Audience to whom it was addressed, but is surely gratis dictim [a statement not supported by fact], opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation which had declared that in express terms. It was a hard conclusion to say because there has been no uniformity among the states as to the cases triable by jury, because some have been so incautious as to abandon this mode of trial, therefore the more prudent states shall be reduced to the same level of calamity. It would have been much more just and wise to have concluded the other way that as most of the states had judiciously preserved this palladium, those who had wandered should be brought back to it, and to have established general right instead of general wrong. Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no government should refuse, or rest on inference. The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the constitution permits it. He is then an officer for life. This once observed it becomes of so much consequence to certain nations to have a friend or foe at the head of our affairs that they will interfere with money and with arms. A Galloman or an Angloman will be supported by the nation he befriends. If once elected, and at a second or third election outvoted by one or two votes, he will pretend false votes, foul play, hold possession of the reins of government, be supported by the states voting for him, especially if they are the central ones lying in a compact body themselves and separating their opponents: and they will be aided by one nation of Europe, while the majority are aided by another. The election of a President of America some years hence will be much more interesting to certain nations of Europe than ever the election of a king of Poland was. Reflect on all the instances in history ancient and modern, of elective monarchies, and say if they do not give foundation for my fears, the Roman emperors, the popes, while they were of any importance, the German emperors till they became hereditary in practice, the kings of Poland, the Deys of the Ottoman dependancies. It may be said that if elections are to be attended with these disorders, the seldomer they are renewed the better. But experience shews that the only way to prevent disorder is to render them uninteresting by frequent changes. An incapacity to be elected a second time would have been the only effectual preventative. The power of removing him every fourth year by the vote of the people is a power which will not be exercised. The king of Poland is removeable every day by the Diet, yet he is never removed.—Smaller objections are the Appeal in fact as well as law, and the binding all persons Legislative, Executive and Judiciary by oath to maintain that constitution. I do not pretend to decide what would be the best method of procuring the establishment of the manifold good things in this constitution, and of getting rid of the bad. Whether by adopting it in hopes of future amendment, or, after it had been duly weighed and canvassed by the people, after seeing the parts they generally dislike, and those they generally approve, to say to them 'We see now what you wish. Send together your deputies again, let them frame a constitution for you omitting what you have condemned, and establishing the powers you approve. Even these will be a great addition to the energy of your government.' —At all events I hope you will not be discouraged from other trials, if the present one should fail of its full effect.—I have thus told you freely what I like and dislike: merely as a matter of curiosity for I know your own judgment has been formed on all these points after having heard every thing which could be urged on them. I own I am not a friend to a very energetic government. It is always oppressive. The late rebellion in Massachusetts has given more alarm than I think it should have done. Calculate that one rebellion in 13 states in the course of 11 years, is but one for each state in a century and a half. No country should be so long without one. Nor will any degree of power in the hands of government prevent insurrections. France with all its despotism, and two or three hundred thousand men always in arms has had three insurrections in the three years I have been here in every one of which greater numbers were engaged than in Massachusetts and a great deal more blood was spilt. In Turkey, which Montesquieu supposes more despotic, insurrections are the events of every day. In England, where the hand of power is lighter than here, but heavier than with us they happen every half dozen years. Compare again the ferocious depredations of their insurgents with the order, the moderation and the almost self extinguishment of ours.—After all, it is my principle that the will of the Majority should always prevail. If they approve the proposed Convention in all its parts, I shall concur in it chearfully, in hopes that they will amend it whenever they shall find it work wrong. I think our governments will remain virtuous for many centuries; as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America. When they get piled upon one another in large cities, as in Europe, they will become corrupt as in Europe. Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty. I have tired you by this time with my disquisitions and will therefore only add assurances of the sincerity of those sentiments of esteem and attachment with which I am Dear Sir your affectionate friend & servant,

TH: JEFFERSON

P.S. The instability of our laws is really an immense evil. I think it would be well to provide in our constitutions that there shall always be a twelvemonth between the ingrossing a bill and passing it: that it should then be offered to its passage without changing a word: and that if circumstances should be thought to require a speedier passage, it should take two thirds of both houses instead of a bare majority.

Document 25. Amendments Proposed by the Massachusetts Convention

. . . As it is the opinion of this Convention that certain amendments and alterations in the said constitution would remove the fears and quiet the apprehensions of many of the good people of this Commonwealth and more effectually guard against an undue administration of the Federal Government. The Convention do therefore recommend that the following alterations and provisions be introduced into the said Constitution.

First, That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

Secondly, that there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of the Representatives amounts to Two hundred.

Thirdly, That Congress do not exercise the powers vested in them by the fourth Section of the first article, but in cases when a State shall neglect or refuse to make the regulations therein mentioned or shall make regulations subversive of the rights of the People to a free and equal representation in Congress agreeably to the Constitution.

Fourthly, That Congress do not lay direct Taxes but when the Monies arising from the Impost and Excise are insufficient for the public exigencies nor then until Congress shall have first made a requisition upon the States to assess levy and pay their respective proportions of such Requisition agreeably to the Census fixed in the said Constitution; in such way and manner as the Legislature of the States shall think best, and in such case if any State shall neglect or refuse to pay its proportion pursuant to such requisition then Congress may assess and levy such State's proportion together with interest thereon at the rate of Six per cent per annum from the time of payment prescribed in such requisition.

Fifthly, That Congress erect no Company of Merchants with exclusive advantages of commerce.

Sixthly, That no person shall be tried for any Crime by which he may incur an infamous punishment or loss of life until he be first indicted by a Grand Jury, except in such cases as may arise in the Government and regulation of the Land and Naval forces.

Seventhly, The Supreme Judicial Federal Court shall have no jurisdiction of Causes between Citizens of different States unless the matter in dispute whether it concerns the realty or personalty be of the value of three thousand dollars at the least nor shall the Federal Judicial Powers extend to any actions between Citizens of different States where the matter in dispute whether it concerns the Realty or personalty is not of the value of Fifteen hundred dollars at the least.

Eighthly, In civil actions between Citizens of different States every issue of fact arising in Actions at common law shall be tried by a Jury if the parties or either of them request it.

Ninthly, Congress shall at no time consent that any person holding an office or trust or profit under the United States shall accept of a title of Nobility or any other title or office from any King, prince, or Foreign State.

And the Convention do in the name and in behalf of the People of this Commonwealth enjoin it upon their Representatives in Congress at all times until the alterations and provisions aforesaid have been considered agreeably to the Fifth article of the said Constitution to exert all their influence and use all reasonable and legal methods to obtain a ratification of the said alterations and provisions in such manner as is provided in the said Article.

Document 26. Amendments Proposed by the Virginia Convention

. . . That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following:—

1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

2d. That all power is naturally invested in, and consequently derived from, the people; that magistrates therefore are their *trustees* and *agents,* at all times amenable to them.

3d. That government ought to be instituted for the common benefit, protection, and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

4th. That no man or set of men are entitled to separate or exclusive public emoluments privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of magistrate, legislator, or judge, or any other public office, to be hereditary.

5th. That the legislative, executive, and judicial powers of government should be separate and distinct; and, that the members of the two first may be restrained from oppression by feeling and participating the public burdens, they should, at fixed periods, be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of government, and the laws, shall direct.

6th. That the elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee, can be set, rated or levied, upon the people without their own consent, or that of their representatives, so elected; nor can they be bound by any law to which they have not, in like manner, assented, for the public good.

7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.

8th. That, in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be fund guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the law of the land.

10th. That every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable.

12th. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property; all warrants, therefore, to search suspected places, or seize any freeman, his papers, or property, without information on oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievious and oppressive; and all general warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs.

19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.

20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others.

Document 27. The Bill of Rights, Amendments 1-10 to the Constitution

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X.
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

For Further Reading

There is an immense amount of literature available on the Confederation period and the drafting of the Constitution. Following are some of the more important works.

Two extremely influential books on the political ideas of the revolutionary generation are Bernard Bailyn, ***The Ideological Origins of the American Revolution*** (1967), and Gordon S. Wood, ***The Creation of the American Republic, 1776–1787*** (1969). Both deal with the legacy of British political philosophy in the colonies, an idea that is also expounded in John Phillip Reid, ***Constitutional History of the American Revolution: The Importance of Rights*** (1987). Forrest McDonald, ***Novus Ordo Seclorum: The Intellectual Origins of the Constitution*** (1985), takes issue with this prevailing "republican ideology" interpretation.

The "critical period" view of the Confederation is best articulated in the classic work by Andrew C. McLaughlin, ***The Confederation and the Constitution, 1781–1789*** (1905). Problems of the states and nation during this period are explored in Frederick W. Marks III, ***Independence on Trial*** (1973), and E. James Ferguson, ***The Power of the Purse: A History of American Public Finance, 1776–1790*** (1961). Shay's Rebellion is the topic of Marion E. Starkey, ***A Little Rebellion*** (1955).

Merrill Jensen, ***The New Nation: A History of the United States During the Confederation, 1781–1789*** (1950) paints the experience under the Articles in its most positive light. More recent balanced treatments include Edmund S. Morgan, ***The Birth of the Republic, 1763–1789*** (1956) and Forrest McDonald, ***E Pluribus Unum: The Formation of the American Republic, 1776–1790*** (1965).

For the Philadelphia convention, Max Farrand, ed., ***The Records of the Federal Convention of 1787*** (4 vols., 1911–1937), constitutes the documentary foundation based on Madison's notes. Single-volume narratives include Charles Warren, ***The Making of the Constitution*** (1929), David G. Smith, ***The Convention and the Constitution*** (1965), and Rozanne Rothman, ***Acts and Enactments: The Constitutional Convention of 1787*** (1974).

Slavery at the convention is dealt with in Staughton Lynd, ***Class Conflict, Slavery and the United States Constitution*** (1967), which should be compared to the relevant chapters in Donald Robinson, ***Slavery in the Structure of American Politics, 1765–1820*** (1982), and James McGregor Burns, ***The Vineyard of Liberty: The American Experiment*** (1982).

There are a number of editions of ***The Federalist*** available. Garry Wills, ***Explaining America: The Federalist*** (1981), is a perceptive interpretation. There has been a new interest in the antifederalists, and their works have been collected by Herbert J. Storing and Murray Dry in ***The Complete Anti-Federalist*** (7 vols., 1981), the first volume of which contains a very sympathetic essay. See also Robert Rutland, ***The Ordeal of the Constitution: The Antifederalists and the Ratification Struggle of 1787–1788*** (1966), and Stephen R. Boyd, ***The Politics of Opposition: Antifederalists and the Acceptance of the Constitution*** (1979).

No single study of the Constitution has caused more debate than Charles A. Beard's ***An Economic Interpretation of the Constitution*** (1913); the most convincing response is Forrest McDonald, ***We the People: The Economic Origins of the Constitution*** (1958). At present, most scholars concede that economic considerations played some role in the drafting and adoption of the Constitution, but that political and ideological matters proved far more important. See, for example, Robert A. Rossum and Gary L. McDowell, eds., ***The American Founding: Politics, Statesmanship and the Constitution*** (1981).

The best place to begin the Bill of Rights is Robert A. Rutland, ***The Birth of the Bill of Rights, 1776–1791*** (1955). Individual amendments and the rights they protect are explored in numerous books and articles, such as William Miller, ***The First Freedom*** (1985), and Leonard W. Levy, ***Origins of the Fifth Amendment*** (1968).

Appendix–Suggested Lesson Plans

Introduction

The lesson plans in this section are intended to assist teachers in presenting three of the twenty-seven documents contained in this publication. The structure and strategies of these lessons for high school students are adaptable for use with other documents.

This section also includes a description of the two courses for which the documents are intended—Virginia and United States History, taught in the eleventh grade, and Virginia and United States Government, taught in the twelfth grade. This is followed by a selection from the Social Studies Standards of Learning objectives with supporting instructional objectives.

Plans for teaching each of the three documents are organized as follows:

- A brief quiz which may be used for either a pretest to establish the condition of students' knowledge before instruction begins or to indicate to students their need for instruction, thus engaging their attention.
- Detailed plans for instructor and students to achieve learning, including such specific aids as definition of terms, recommended resources, and techniques for effective individual, small group, and whole class instruction. Some of these activities, labeled Less Challenging Activities, are intended for students who prefer more simply structured work and require a more controlled environment for learning. Enrichment Activities may be appropriate for students at all levels of achievement.
- Essay and objective questions for use in evaluation of learning.

A list of Instructional Resources related to this period of history is also provided.

Course Descriptions

Virginia and United States History

This course encompasses the development of American ideals and institutions through the study of major events, eras, and personalities of Virginia and United States history from the age of exploration to the modern era. The historical development of the Declaration of Independence, the Constitution of the United States, the Virginia Declaration of Rights, the Virginia Statute of Religious Freedom, and basic principles inherent in these documents are examined and related to everyday life.

The subject matter is more abstract and complex than that of grades four, five, and seven. The course provides a perspective on the relationship between the past and contemporary issues. The role that Virginia and Virginians played in the early development of America is emphasized as well as important events, personalities, and issues of modern Virginia and their relationships to United States and world affairs. Concepts and techniques employed by historians, economists, archaelogists, and other social scientists are explored and practiced by students; writing and thinking skills and skills in interpreting charts, graphs, and other symbols are further developed and refined.

Virginia and United States Government

This course examines the basic structures of governments. The decision-making processes at the local, state, national, and international levels are emphasized. Powers inherent to each branch of government are examined through the study of the Constitution of the United States and its amendments and other historical documents, the state constitution, and local governing bodies. Democratic values and citizen participation are stressed throughout the course. Student participation in the community should be encouraged.

American foreign policy is studied in the historical context in which it occurred and our governmental system is compared with other forms of government. Characteristics of the economic system of the United States are compared and contrasted to other economic systems and basic economic concepts, principles, and models are explored. Thinking, communication, and symbol interpretation skills continue to be refined and concepts and methods employed by political scientists and economists are examined and practiced by students.

Curriculum Objectives and Supporting Instructional Objectives

SOL 11.1

The student will describe the relationship of Virginia and American documents to democratic principles and the development of those principles.

The student will examine the original language of the document, translate it into modern words, and discuss the translation.

SOL 11.4.

The student will show the ways that divergent viewpoints have influenced historical events and decisions.

The student will consider opposing sides of some issues of concern to the nation's founders and argue the questions that they raise.

SOL 11.9.

The student will conduct research and present the results in an oral and/or written form.

The students will compare documents, will seek out and study materials that comment on the documents, will share his/her results with others who have attempted this research, and will arrive at a synthesis of materials.

SOL 12.4.

The student will analyze the basic rights and responsibilities of American citizens and describe the historical evolution of the interpretation of these rights.

The student will consider the significance of the proposed processes outlined in documents preceding the Bill of Rights.

SOL 12.7.

The student will analyze the Virginia and the United States Constitutions, the documents which preceded their adoption, and the evolving interpretations of these documents.

The student will examine closely the Virginia Plan and its relationship to the Articles of Confederation in preparation for comparing the Articles with the Constitution.

SOL 12.12.

The student will demonstrate data gathering skills.

The student will practice defining terms, collecting arguments for a debate, and comparing sources of information.

Document 5. *The Virginia Plan for Union*

I. Pretest

A. Define the following terms:

1. confederation
2. suffrage
3. liberal stipends
4. contravening
5. impeachment
6. republican government

B. Why did some of the leaders of the United States believe that the Articles of Confederation ought to be corrected and enlarged?

C. How were members of congress chosen under the Articles?

D. What powers did congress have under the Articles?

E. Describe the "executive" under the Articles.

F. State an issue on which northern and southern states of the union generally disagreed in the 1780s.

G. State an issue on which large and small states disagreed.

II. Instructional Activities

A. Study the words of the document.

STRATEGY: Divide the 15 sections of the document into seven segments and assign each segment to a group of students for study. Direct students to work individually and translate the words into completely modern and understandable language.

After individual effort at home or for a time in class, convene the groups and provide for each section a copy of the points presented below. As students discuss each section and agree upon an appropriate translation, the instructor moves about the classroom observing, noting participation and problems, and helping as needed to avoid frustration and discord.

When students have completed this small group work, each committee presents its translation for notetaking by the class. Allow time for questions and discussion.

All sections: Resolved, Resd., Resold., Resolvd. (Note the diversity of presentation, the lack of concern about spelling; then, consider: What does "resolved" mean? It is agreed? It is declared by formal vote? It is decided?)

Section 1.

- "the objects proposed by their institution" (what the people who wrote and installed the Articles of Confederation intended to accomplish)
- "common defence" (sic) (protection of all of the states by all of the states; shared protection against outsiders), etc.
- "security of liberty" (the condition of having most people do well, perhaps in happiness, health, prosperity)

Section 2.

- "the rights of suffrage" (power to participate in the choices of the society; right to vote, particularly, power of votes)
- "national legislature" (lawmaking body for the whole nation, as opposed to separate legislatures for particular states and as opposed to congress, which operated under the Articles of Confederation)
- "proportioned" (divided according to)
- "Quotas of contribution" (funds to support the national government required from

each particular state)

- "number of free inhabitants" (number of people who live in the state and are not slaves or indentured servants)
- "rule" (accepted procedure, in this case, for proportioning the votes in congress)

Section 3.

- "branches" (natural subdivisions)

Section 4.

- "first branch" (most important part?)
- "people of the several States" (inhabitants of each separate state acting in the state, as opposed to acting in the whole nation)
- "liberal stipends" (generous, regular, fixed payment)
- "ineligible" (not permitted to serve)
- "To any office established . . . United States" (in any job set up by either a state or the national government)
- "except those peculiarly belonging to the functions of the first branch" (unless such a job is exactly part of the work of the House of Representatives)
- "during the term of service, and for the space of — after its expiration;" (while they are members of the House and afterward for a certain time)
- "to be incapable of reelection for the space of — after the expiration of their term of service" (not able to run for reelection)
- "and to be subject to recall." (able to be voted out of office during one's term)

Section 5.

- "out of a proper number of persons nominated" (from an appropriate group of several people proposed)
- "nominated by the individual Legislatures" (named as candidates by the state legislatures)
- "a term sufficient to ensure their independency," (enough time that they need not show too much deference to the public in order to be constantly reelected)
- "to receive . . . expiration thereof." (able to be voted out of office during one's term)

Section 6.

- "right of originating Acts;" (power of first introducing a piece of legislation to be considered by both branches)
- "the National Legislature . . . impowered . . . enjoy the Legislative Rights vested in Congress by the Confederation" (the new legislature should have at least the powers of the old)
- "& moreover to legislate in . . . cases . . . separate States are incompetent" (the National Legislature should be able to make laws about matters too large for individual states to handle)
- "or in which the harmony . . . may be interrupted by . . . individual Legislation;" (make laws about matters on which separate states disagree strongly because of their own interests)
- "to negative all laws by . . . State contravening in the opinion of the National Legislature the articles of Union;" (the National Legislature should be able to veto acts of state legislatures that disagree—in the eyes of the Congress—with the Constitution)
- "to call forth the force of the Union agst." (to bring whatever power the nation has against)
- "any member of the Union failing to fulfill its duty under the articles" (any state opposing the nation)

Section 7.

- "National Executive" (President)
- "punctually at stated times, a fixed compensation" (a regular, agreed upon amount of pay)
- "No increase or diminution" (no raise or decrease in pay)
- "to affect the magistracy, existing at the time of increase or dimunution (no change in pay for the President who was in office when the Congress voted the change)
- "to be ineligible a second time" (cannot be reelected)
- "enjoy the Executive rights vested in Congress by the Confederation" (have the powers of administration that the Articles of Confederation gave to congress)

Section 8.

- "the Executive" (the President)
- "a convenient number of the National Judiciary" (an appropriate number of national judges)
- "compose" (be; make up)
- "before it shall operate" (before an act of the National Legislature shall become law)
- "& every act of a particular Legislature" (each law of a state legislature)
- "before a negative theron shall be final" (before a state law shall be vetoed by the Congress)
- "unless . . . branch" (but the National Legislature can override the veto of the Council of revision by voting again for a law

or by voting again to veto a state law—if a certain number of members from each house support this position)

Section 9.

- "supreme tribunals" (courts which make the final decisions)
- "inferior tribunals" (lower courts, whose decisions may be appealed to higher courts)
- "no increase or diminution" etc. (see Section 7)
- "to hear & determine" (to listen to testimony and argument and to decide who is right)
- "jurisdiction" (area of power)
- "in the first instance" (in the first step of a series)
- "In the dernior resort" (as the last resource)
- "piracies & felonies on the high seas, captures from an enemy" (crimes committed outside the land, which is controlled by the several states)
- "applying to such jurisdictions" (asking for judgment from national courts)
- "interested" (concerned, involved, affected)
- "respect" (relate to)
- "National revenue" (federal income)
- "impeachments" (accusations of misdeeds)
- "questions which may involve the national peace and harmony" (fierce disagreements among states)

Section 10.

- "provision ought to be made" (we should agree how to)
- "arising" (coming into existence)
- "voluntary junction" (willing, uncoerced joining of present states)
- "a number of voices . . . less than the whole" (a less than unanimous vote)

Section 11.

- "Republican Government" (a government in which supreme power resides in a body of citizens entitled to vote and is exercised by elected officers and representatives responsible to them and governing according to law)
- "ought to be guaranteed by the United States" (the nation should stand ready to do what is necessary to see that each state keeps its republican government)

Section 12.

- "the continuance of Congress" (the legislature operating under the Articles of the Confederation should keep on operating)
- "a given day" (a day agreed upon in advance)
- "the reform of the articles of Union" (the document proposed in this plan)
- "completion of all their engagements" (carrying out all of the promises and contracts that Congress made under the Articles of Confederation)

Section 13.

- "assent of the National Legislature" (agreement of the new law-making body)
- "ought not to be required thereto" (should not be necessary to make changes in the new document)

Section 14.

- "the Legislative, Executive & Judiciary powers" (all of the officials)
- "be bound by oath" (have solemnly promised)

Section 15.

- "the Confederation" (the United States as presently constituted)
- "the Convention" (a gathering to discuss this plan)
- "the approbation of Congress" (a vote by the current legislative body approving the proposed articles)
- "Representatives, recommended by the several Legislatures" (people nominated by each state legislature)
- "expressly chosen by the people, to consider & decide thereon" (elected specifically for the job of voting on the new articles, not to serve in the existing legislature)

B. Debate some issues set forth by the document. **STRATEGY:** Divide the class into three sets of two teams each. Assign one of the propositions listed below to each of the sets and the positive or negative sides of the question to each of the two teams. Tell students to collect their arguments by reading history and government books and by talking to people, including parents, neighbors, friends, workers in their congressman's office, and other teachers. Schedule the debates to allow time for questions from the rest of the class and for a vote to decide the winner of each debate.

Proposition 1: Resolved: That the national legislature ought to consist of a single house.

Proposition 2: Resolved: That the members of the national legislature should be prevented from having too much power by serving only one term, by being subject to recall, and by being ineligible for any job devised by the legislature during and after their terms.

Proposition 3: Resolved: That a Council of Revision made up of the executive and some judges should examine every act of Congress and have the power to reject it for good cause.

C. Compare this document with another.
STRATEGY: Assign students to prepare a concordance for The Virginia Plan from the Articles of Confederation, citing for each of the 15 sections of the plan an article or articles that caused James Madison to include the section.

When individual concordances have been completed as classwork or homework assignment, gather students into groups of five or so to construct as thorough a concordance as possible. Collect and quickly review all papers from each group. Next day, announce best group paper and award prizes to winners: cookies? blue ribbons?

III. Less Challenging Activities

A. Examine the ideas presented by some words in the document.
STRATEGY: Provide a classroom set of dictionaries and the following list of terms. Instruct students to write out definitions. While students work, instructor moves about the classroom, providing help and encouragement for students. Collect papers at the end of the period and check for return the next day. At that time, discuss the terms that gave particular difficulty.

1. resolved
2. common defence (sic)
3. liberty
4. general welfare
5. suffrage
6. proportioned
7. rule
8. liberal stipends
9. ineligible
10. recall
11. individual legislatures
12. national legislature
13. contravening
14. fixed compensation
15. magistracy
16. jurisdiction
17. piracies (plural of piracy)
18. interested
19. impeachments
20. republican government

B. Read the document and participate in a discussion of it, looking for answers to study questions.
STRATEGY: Provide each student with a copy of "The Virginia Plan for Union" and a copy of the questions listed below, reproduced with space for answers to be written on lines provided. Allow students to assist each other if they wish to discuss the questions, but move about the room to help prevent copying of answers. At the end of the period, collect all papers. Check them for a grade and return and review them the next day.

1. What were the purposes of the Articles of Confederation?
2. In what two ways could the number of votes assigned to each state be decided under the Virginia Plan?
3. How many houses would the national legislature have (under the Virginia Plan)?
4. How would the member of the first house be chosen?
5. How would the members of the second house be chosen?
6. What kinds of laws could the national legislature pass?
7. How many terms could the executive serve?
8. What would the Council of Revision do?
9. What kind of cases could the national judiciary hear and decide?
10. How many votes in the national legislature would be required to admit a new state to the union?
11. What would the United States guarantee to each state?
12. Under the Virginia Plan, what would happen to the Congress then in power?
13. Would Congress have the power to change the Articles of Union?
14. What should state officers have to swear?
15. How would the changes to the Articles of Confederation which the Virginia Plan proposed be approved?

IV. Enrichment Activities

Internalize the ideas presented in this document by creating a work of art.
STRATEGY: Using creativity, produce a work of art following any of the suggestions listed below or doing anything else approved in advance by the instructor.

1. Draw or paint a picture that illustrates some aspect of the Virginia Plan.
2. Write a song or rap telling the requirements that the Virginia Plan proposes for members of the legislature, explaining why these requirements are suggested.
3. Write a very short story about a young man in 18th-century America who is trying to understand who has the power.
4. Make a videotape of a short drama in which a young man and his girl friend disagree about whether the Virginia Plan should be adopted.
5. Make a radio tape of a dialogue between Edmund Randolph and James Madison about the possibilities of success for the Virginia plan.
6. Write a report about the Virginia Plan to be published in ***The Virginia Gazette*** of May 31, 1787.

V. Evaluation

Essay: Explain how James Madison hoped to correct the problems of the government with the Virginia Plan.

Short Answer: Select five of the study questions given in Instructional Activity 4 for use in post assessment.

Document 8. Debate on Executive Power

I. Pretest

A. Define the following terms:

1. executive
2. legislative
3. republic
4. monarchy

B. What official or officials had the duty of executing the laws passed by the Congress under the Articles of Confederation?

C. Identify the role of the following members of the Constitutional Convention:

1. Charles Pinckney
2. Charles Cotesworth Pinckney
3. James Wilson
4. Benjamin Franklin
5. John Rutledge
6. Roger Sherman
7. Elbridge Gerry
8. Edmund Randolph

II. Instructional Activities

A. Present vocabulary needed to understand the debate.

STRATEGY: Distribute a handout containing the following words and definitions or those you determine are unknown or unclear to your students. Have students write the definitions above or near the words in the document (perhaps in margins). As an alternative, have students insert "footnote numbers" into text and tuck into text a copy of this glossary for reference. This would encourage students to examine the words by writing them from dictation rather than receiving a handout.

1. ***vigorous*** — strong
2. ***executive (adj.)*** — belonging to the branch of government that is charged with such powers as diplomatic representation, superintendence of the execution of the laws and appointment of officials
3. ***extend to*** — encompass, include
4. ***render*** — make (cause to become)
5. ***executive (n.)*** — the person or persons who make up the entity that administers and carries plans into effect
6. ***monarchy*** — undivided rule or absolute sovereignty by a single person (sometimes hereditary)
7. ***to wit*** — that is, to say
8. ***elective*** — subject to the will of the people, apt to make decisions to please the voters rather than with disinterested wisdom (implied, the coercion of a mob)
9. ***moved*** — made a formal proposal to be voted on
10. ***seconded the motion*** — took the required next step toward a vote
11. ***instituted*** — established, set up
12. ***ensuing*** — happening next
13. ***put the question*** — call for a vote
14. ***observed*** — said
15. ***sentiments*** — feelings, opinions
16. ***animadverted*** — made a critical remark
17. ***precluded*** — ruled out in advance
18. ***vesting*** — placing authority
19. ***administer*** — manage
20. ***magistracy*** — power
21. ***accountable*** — answerable
22. ***depository*** — people to whom something is entrusted
23. ***fixed*** — permanent
24. ***at liberty*** — free
25. ***dictate*** — tell one to do
26. ***energy*** — strength
27. ***dispatch*** — speed
28. ***responsibility*** — reliability

29. ***Prerogatives of the British Monarch*** — powers that the king or queen might choose to use, such as dismiss the legislature or to declare war, about which existed considerable difference of opinion in the seventeenth and eighteenth centuries.
30. ***conceived*** — considered
31. ***appertaining*** — relating
32. ***annexing*** — adding
33. ***weight*** — importance, influence
34. ***strenuously*** — energetically
35. ***fetus of*** — unborn form of
36. ***motive*** — reason, moving power
37. ***governed*** — directed
38. ***prototype*** — model, thing to be imitated
39. ***censure*** — criticism
40. ***fabric*** — structure
41. ***fixed genius*** — settled spirit or quality
42. ***requisites*** — necessities
43. ***unity*** — having only one
44. ***tyranny*** — oppressive power
45. ***inapplicable*** — not appropriate
46. ***extent*** — amount of space occupied
47. ***manners*** — behavior, customs
48. ***great*** — large
49. ***confederated*** — united in a league, but retaining individual power
50. ***Republic*** — a government in which supreme power resides in the body of citizens entitled to vote and is exercised by elected officials and representatives responsible to them and governing according to law

B. Develop an understanding of the issues and positions in the debate.
STRATEGY: After students have read the debate, watching for indications of the positions and personalities of the pariticipants, ask them to choose one debator to learn more about. Using encyclopedias and history books, each student should take notes and then produce a short essay which includes the following elements:

1. The sense of what the speaker said in this debate
2. Data about life and his position in government or society in 1787
3. Any hints of personality, such as arrogance or a sense of humor, discernible in this debate or in reports of his life
4. What the student, with the power of hindsight, thinks about the issues concerning the executive

III. Less Challenging Activities

A. Read the document, looking for answers to study questions and practice writing complete sentences.
STRATEGY: Give each student a copy of the "Debate on Executive Power" and a handout containing the following 20 questions with at least three blank lines following each question. Instruct students to respond to the questions in complete statements rather than short answers. Allow five or ten minutes for production of the first answer and then have as many students as space allows go to the chalkboard and write their answers. Review the answers on the board, complimenting wherever possible, and eliciting friendly and tactful corrections from students. For each sentence on the board, enter grade in your records as a reward.

At the end of this practice, have students work on the rest of the questions. Collect the papers at the end of the period or allow students to finish them at home, but students who work diligently and turn in papers at the end of the period should receive extra points. Papers turned in at the end of the period should be quickly viewed and graded to be returned the next day. If it appears to be necessary, have students share correct answers in carefully chosen small groups (each group including at least one student). Students should receive a copy of the glossary given in Activity 1, presented in alphabetical order, to wit:

accountable, administer, animadverted, annexing, appertaining, at liberty, censure, conceived, confederated, depository, dictate, dispatch, elective, energy, ensuing, executive (adj., N.) extend to, extent, fabric, fetus, fixed, fixed genius, governed, great, inapplicable, instituted, magistracy, manners, monarchy, motive, moved, observed, precluded, Prerogatives of the British Monarch, prototype, render, republic, requisites, responsibility, seconded the motion, sentiments, strenously, to wit, tyranny, unity, vesting, vigorous, weight.

1. Did Mr. Pinckney support or oppose a strong executive?
2. What did Pinckney think was the worst kind of a monarchy?
3. What powers of the government especially concerned Pinckney?
4. How many people did Mr. Wilson want to be the executive?
5. Why did Dr. Franklin want the man at the convention to talk instead of immediately voting?

6. What was Mr. Rutledge's theory about why the gentlemen were shy about speaking on this and other subjects?
7. What particular powers did Rutledge want to keep from the executive.
8. What was Rutledge's argument for having only one man as the executive?
9. Why should the number of men in the executive be left up to Congress to decide, according to Mr. Sherman?
10. What was Mr. Wilson's argument for having only one man as the executive?
11. According to Wilson, what are really the only powers of the executive?
12. Why didn't Wilson think "Prerogatives of the British Monarch" (that is, the traditional powers of the British king or queen) would be a guide for the United States in deciding the powers of the executive?
13. Give Mr. Gerry's argument for having more than one man in the executive.
14. What was Mr. Randolph's first argument in opposition to a one-man executive?
15. What did Randolph think of the British system of government?
16. Why didn't Randolph want the United States to adopt the same system?
17. What was his reply to Mr. Wilson's argument for a single executive?
18. What did Randolph say was needed to support the "independence" of the executive?
19. How did Wilson respond to Randolph's remark about "the fetus of monarchy"?
20. Why, according to Wilson, would nothing do for the United States but "a great confederated Republic"?

B. Help students to think about the Founding Fathers who participated in this debate as live people who worked to take control of their own lives and to provide us, their descendents, with similar control.

STRATEGY: Using the brief sketches below, describe the participants in the debate to the students. Do not read, but talk from an outline which you have made. As an alternative, you could have students use the sketches and make the talks to their classmates.

Before beginning, instruct the class that after each talk, students will make a pencil sketch or cartoon of the debator described, emphasizing some aspect of the man's history and or character.

1. **BENJAMIN FRANKLIN (1706–1790)** was one of the most admired men in the world during his lifetime and remains so today. The youngest son of a poor candlemaker in Boston, he began his career in printing as an indentured servant to his elder brother James, who brought a printing press from London to Boston in 1717. He was so successful as a printer and writer—producing almanacs, paper currency and other government printing, and newspapers—that he was able to retire on a secure income at the age of 42, and thereafter he gained further fame as a scientist (experimenting with electricity), inventor (of the Franklin stove and other devices), and a political leader.

   He attempted to bring peace between England and the American colonies until it became clear that war was inevitable; then he was a member of the 1776 delegation to France which successfully sought military and economic assistance for the colonies as they fought for independence. He signed both the Declaration of Independence and the Constitution.

   As a member of the Constitutional Convention, he supported the ideas of a committee executive and a single house of legislature. Finally, he supported compromise and urged unanimous adoption of the Constitution. "This government," Franklin wrote, "is likely to be well administered for a course of years and can only end in despotism, as other forms have done before, when the people shall become so corrupted as to need despotic government, being incapable of any other."

   Franklin is usually viewed as a thoroughly pragmatic leader, the antithesis of the mystic, idealistic strain of American character. His last public effort was support for an attempt to have the first Congress of the United States consider the abolition of Negro slavery.

2. **ELBRIDGE GERRY (1744–1814)** was the son of a prosperous merchant in Marblehead, Massachusetts. He graduated from Harvard College and soon became a supporter of the movement toward revolution. He signed the Declaration of Independence and later became a member of Congress under the Articles of Confederation.

   Although he participated in the Constitutional Convention, he opposed the adoption of the Constitution. After it was ratified, however, he supported it and later he was elected to serve in Congress. As an emmissary to France, he drew criticism for failing to react angrily toward French discourtesy, and later his name was associated with the practice of gerrymandering, or drawing electoral districts in such a way as to give one political party an unfair advantage. Elected vice president under James Madison, he died in office.

3. **CHARLES PINCKNEY (1757–1824)** of South Carolina, was captured and held prisoner by the British during the American Revolution. Later he served in the Continental Congress and urged revision of the Articles of Confederation.

   As a member of the Constitutional Convention, he proposed a detailed plan of government which contained more than 30 of the provisions that ended up as part of the Constitution. He supported the ratification of the Constitution in South Carolina and contributed to the adjustment between state and national governments when he served as governor from 1789 to 1792.

4. **CHARLES COTESWORTH PINCKNEY (1746–1825),** cousin of Charles Pinckney, was also a prisoner during the Revolution, after serving as aide to General Washington and later commanding a regiment.

   In the Constitutional Convention, his positions included opposition to religious tests for office, setting 1808 as the year to end the slave trade, and giving the Senate the power to advise and consent to the ratification of treaties. With Elbridge Gerry he went to France as part of a commission seeking to end certain disagreements, but he is reported to have been irate at the idea of a bribe from French officials.

5. **EDMUND RANDOLPH (1753–1813)** was born and reared in Williamsburg, attended William and Mary College and then studied law in his father's office. As the American Revolution approached, his father, mother and sisters sailed for England while Edmund stayed with the colonists. He served on the committee that drew up a Virginia Bill of Rights and a state constitution.

   Randolph presented the Virginia Plan at the Constitutional Convention and served on the committee on detail that prepared a first draft of the new document. However, he was one of the members of the Convention who refused to sign the Constitution, saying that it did not have enough protection for states and individual rights. Later, he supported the document because, he said, he was afraid the union might dissolve if the Constitution was not adopted.

6. **JOHN RUTLEDGE (1739–1800)** was another South Carolina delegate to the Constitutional Convention, having earlier served as a delegate to the Stamp Act Congress and to the Continental Congress and as first president or governor of his state. In the Convention, he supported slavery and the payment of state debts by the national government. He also urged that society be divided into classes as a basis for representation and that only large property holders should be eligible for elective office.

   Once he was sure that slavery was safely legal according to the Constitution, he became very supportive of the national government. As chairman of the Committee of Detail, he recommended that broad powers of lawmaking for the promotion of the general be delegated to the national legislature. Rutledge later served as Chief Justice of the U.S. Supreme Court.

7. **ROGER SHERMAN (1721–1793)** was born and grew up in Massachusetts and at the age of 22 moved to Connecticut, where he was a shoemaker, farmer, and student. He became a lawyer, established a general store, and took an active part in society.

   He signed the Declaration of Independence, then helped write the Articles of Confederation. At the Constitutional Convention one of his most important efforts was support for the Connecticut Compromise, which broke the deadlock between large and small states.

8. **JAMES WILSON (1742–1798)** came to America from Scotland when he was 23 and began teaching Greek and rhetoric in the College of Philadelphia. He became an outstanding lawyer and published a paper on the power of the British Parliament which helped to place him high among the political theorists of the colonies.

   Wilson is recognized as an important supporter of the system of federalism, having studied the difficult question of how to achieve necessary unity of the colonies and at the same time keep the local control which citizens of the new nation believed necessary for a true republic.

   (Sketches were summarized from information published in the Encyclopaedia Britannica.)

IV. Enrichment Activities

Dramatize this debate.

STRATEGY: Divide the class into groups to serve as script writers, performers, camera persons, costume and scenery providers, etc. and produce this debate as a videotaped performance. Then arrange for another class to view the videotape and discuss the issues presented in the performance.

V. **Evaluation**

Essay: Summarize the arguments for and against a unitary executive that were made in the "Debate on Executive Power." Then state your own position, on this issue and briefly defend it.

Multiple Choice:

1. To the participants in this debate, a monarchy was, **(a)** a constitutional king or queen such as England now has, **(b)** a hereditary ruler, whether kindly or cruel, **(c)** undivided rule by a single person.
2. One of the reasons proposed in this debate for the unwillingness of convention delegates to speak on certain questions was, **(a)** that their constituents back home might object, **(b)** that they might want to change their minds, **(c)** that they did not know enough.
3. An argument presented for letting the legislature set the number of men to make up the executive was that, **(a)** the legislature represented the people, **(b)** the judiciary was too busy, **(c)** the question was difficult to decide.
4. The powers about which the debaters expressed most concern were the powers of, **(a)** taxation, **(b)** war and peace, **(c)** appointing officials.
5. Arguments for a multiple executive included all of these except, **(a)** to inspire confidence, **(b)** to spread the blame in case of public dissent, **(c)** to make the office independent.
6. Arguments for a unitary executive included, **(a)** it would be a safeguard against tyranny, **(b)** it would be a fetus of monarchy, **(c)** it would imitate the excellent structure of the British government.
7. Those debators who opposed imitating the British government did so on the ground that, **(a)** it would mean taxation without representation, **(b)** it would be unwise to return to the system that they had overthrown, **(c)** the United States was too large and the people were too republican.

Document 10: Debate on on the Judiciary, The Veto, and The Separation of Powers

I. **Pretest**

A. Explain the following ideas:

1. the revisionary power
2. the veto of a law
3. the separation of powers
4. a system of checks and balances

B. Identify four of these Founding Fathers by telling their opinions on the controversies that were important at the Constitutional Convention:

1. James Madison
2. Nathaniel Gorham
3. Oliver Ellsworth
4. George Mason
5. Gouverneur Morris
6. Luther Martin

II. **Instructional Activities**

A. Translate obsolete and unusual words into understandable language.

STRATEGY: Assign students to make an alphabetical list of the words in the document that are of uncertain or no meaning to them, leaving space for insertion of definitions. Invite them to attempt definitions from the context and also to use dictionaries, again guided by context, in order to complete a glossary for this document.

When students have produced their own glossaries in class (if a set of dictionaries is available) or as homework, present the following list on overhead projector transparencies to guide review of their lists. (For evaluation of student effort and progress, the instructor should collect and check students' work before beginning review.)

1. ***apprehended*** — feared
2. ***apprehensive*** — fearful
3. ***apprehension*** — worry, concern
4. ***ascertained*** — made sure of
5. ***calamities***—disasters (under earlier laws)
6. ***calculated*** — intended
7. ***capacity*** — position, function
8. ***check*** — block, stoppage
9. ***coalition*** — combination
10. ***cogent*** — convincing
11. ***conciseness*** — without unnecessary words

12. ***concurred*** — agreed
13. ***confirmed*** — made certain
14. ***consequences*** — results
15. ***consistency*** — harmony of parts
16. ***defensive authority*** — power to defend itself
17. ***deluded and misled*** — fooled
18. ***demagogues*** — evil leaders of the common people
19. ***disconcerts*** — confuses
20. ***effect*** — operation
21. ***emissions*** — putting out
22. ***encroachments*** — trespassing on rights of others
23. ***evinced*** — displayed, revealed
24. ***expedient*** — resource
25. ***expositors*** — those who explain
26. ***expounding*** — explaining
27. ***framing*** — constructing
28. ***ground*** — reason
29. ***impede*** — interfere with
30. ***inconsiderable*** — small
31. ***incumbent on him*** — his duty
32. ***innovation*** — experiment
33. ***interest*** — right, title, or legal share in something
34. ***jurisdiction*** — area of power
35. ***largesses*** — liberal giving
36. ***law of Nations*** — international law
37. ***liable*** — subject
38. ***maxim*** — rule
39. ***measures*** — decisions, actions
40. ***meditated*** — thought of
41. ***mere*** — being nothing more than
42. ***negative*** — veto, power to vote against
43. ***observation*** — remark
44. ***opportunity of defending their constitutional rights*** — chance to exert power, make decisions
45. ***peculiar*** — special, distinctive
46. ***pernicious*** — exceedingly harmful
47. ***perspicuity*** — clarity
48. ***principles*** — fundamental beliefs
49. ***privy council*** — advisors to the king or executive
50. ***policy*** — general position chosen from alternatives
51. ***prerogatives*** — special powers and privileges
52. ***projected*** — future
53. ***proposition*** — idea
54. ***pushed*** — supported
55. ***reflection*** — thought
56. ***remission*** — forgiveness or postponement
57. ***remonstrating*** — arguing against
58. ***revisionary*** — relating to change
59. ***secure*** — guard
60. ***security*** — guarantee
61. ***statesmen*** — those actively engaged in conducting the business of a government and establishing its policy
62. ***superfluous*** — more than needed
63. ***supply the deficiency*** — make up for what was missing
64. ***systematic*** — organized
65. ***technical propriety*** — having appropriate words
66. ***transitory*** — fleeting
67. ***vortex*** — whirlpool, something that pulls things into itself
68. ***unjust*** — unfair
69. ***usurpation*** — seizure of power
70. ***utility*** — usefulness
71. ***wanting*** — lacking, missing
72. ***weight*** — value

B. Make a close examination of a document in order to write an essay.

STRATEGY: Assign students to choose one of the topics listed below and to produce an essay developing the idea. Divide members of the class fairly even among the topics. On the day when the essays are due, seat students in groups according to topic. Have each group elect a chair to conduct the rest of the program.

The chair will collect all essays and distribute them to people in the group other than the authors. Every member of the group will silently read the essays of the other members and write cogent commentary on each one. If time permits, conclude the exercise with discussion of the ideas in the essays by each group observed by other members of the class.

1. The Founding Fathers' Opinions of Legislatures
2. Two American Views Comparing Roles of British Judges to American Judges
3. The Founding Fathers' Opinions of Judges
4. Does Separation of Powers Protect Rights?
5. A Comparison of the Views of Madison and Morris on Revisionary Powers

III. Less Challenging Activities

Read a document in order to help a partner find answers to study questions.

STRATEGY: Give each student a copy of the following study questions. Allow students to choose partners and divide the questions between them, one partner seeking answers for odd-numbered questions, the other for even-numbered questions. After most students have written the answers that they have found, have them share answers to fill in their worksheets.

A copy of the glossary provided for this document should be given to each student to use as he chooses.

1. What idea did Mr. Wilson think he should bring up again even though it had been defeated before?
2. What could be wrong with laws other than being unconstitutional?
3. Why did Mr. Gorham oppose letting the judges sit on revisionary committee?
4. Who did Gorham want to be responsible for revising or vetoing the laws?
5. What were Mr. Ellsworth's two arguments for giving judges revisionary power?
6. According to Mr. Madison, how would the revisionary power be useful to the Judiciary and the Executive?
7. How would the revisionary power be useful to the Legislature and the community at large, according to Madison?
8. What was Madison's theory about the greatest danger to the American Constitution?
9. What did Mr. Gerry believe should be done with the revisionary power?
10. Who did Gerry think would guard the people's rights and interests?
11. What did Gerry suggest as a way to be sure that laws were written properly?
12. According to Mr. Strong, if judges helped to frame the laws, what might happen when they came to explain them?
13. Why didn't Mr. Morris think the Executive would be able to be an effective check on the Legislature?
14. What was Morris's argument against Gorham's statement that British judges didn't need the revisionary power?
15. What was the great difference between British and American executives that Morris pointed out?
16. As Morris saw it, which part of the government threatened the people's freedom most?
17. Luther Martin argued against giving the judges revisionary power on what three points?
18. Why didn't Madison think it was enough to write in the Constitution that the three departments of power would be separate and distinct?
19. What kind of laws did Colonel Mason expect the legislature to pass frequently?
20. Why would judges be especially effective for preventing ineffective laws?

IV. Enrichment Activities

A. Create a political cartoon lampooning one of these debaters.

B. Using encyclopedias and history books, collect information about the development of the ideas of separation of powers and checks and balances in the writings of earlier political scientists, such as Plato, Aristole, Machiavelli, Montesquieu, Hobbes, Locke and others.

C. Present oral reports, speaking from outline or notes, on the research above.

V. Evaluation

A. **Essay:** Present the chief elements of the two sides of the mid-July, 1787, argument about whether the judicial branch should join with the executive branch in a revisionary committee to check on the work of the legislative branch.

B. True or False:

1. Mr. Wilson said that laws may be dangerous but not unconstitutional.
2. Members of the convention unanimously agreed that the judges in England had no revisionary power.
3. Fear of legislative encroachments on the rights of the people and on the powers of the other branches led to support for the revisionary proposals.
4. James Madison declared that laws in the United States were poorly written.
5. The excessive power of the executive branch was the chief concern of this debate.
6. One of the debaters proposed hiring a person "of proper skill" to write bills for the legislature.
7. Mr. Morris said that ineffective laws probably would not be "pushed."
8. One means of preventing the misleading of the people, Morris said, was the press.
9. One argument against giving the judiciary the power of revision was that the Supreme Judiciary would soon lose the confidence of the people if it were employed in arguing against legislative ideas supported by the people.
10. Madison argued that separation of powers must be preserved by providing defensive powers for each of the branches.

VI. Instructional Resources

A. Books

1. J. M. Blum et al, ***The National Experience,*** third edition, New York: Harcourt Brace Jovanovich (1973).
2. James MacGregor Burns et al, ***Government by the People,*** twelfth edition, New Jersey: Prentice-Hall (1985).
3. Henry Steele Commager (ed.), ***Documents of American History,*** Vol. I—to 1898, New York: Appleton-Century-Crofts (1968).
4. Jacob E. Cooke (ed.), ***The Federalist*** (1961).
5. Edward S. Corwin (ed.), ***The Constitution of the United States: Analysis and Interpretation,*** Legislative Reference Service, Library of Congress (1953).
6. A. H. Kelly and W. A. Harbison, ***The American Constitution: Its Origins and Development*** (1948).
7. A. C. McLaughlin, ***A Constitutional History of the United States*** (1936).

B. Films

1. "Constitution of the United States" (2nd Ed.) (1982), Encyclopaedia Britannica Educational Corporation (Dramatizes the conditions which led to the creation of a stronger federal government, the events leading to the convening of the Constitutional Convention, the major work of the convention, the underlying principles of government in the Constitution and the struggle over ratification.)
2. "The Constitution: The Compromise That Made A Nation," from The Decades of Decision—The American History Series (1974), distributed by Learning Corporation of America (Portrays the controversy between the large and small states and the spirit of compromise which resolved the problems and formed the basis for the framing of the American Constitution.)
3. "To Form A More Perfect Union," from The Decades of Decision—The American History Series (1974), distributed by Learning Corporation of America (Presents a recreation of the events leading up to the ratification of the U.S. Constitution. Explains that its ratification depended upon a compromise with the forces advocating strong state government. Shows Governor John Hancock and Samuel Adams proposing amendments which assured its acceptance.)
4. "George Mason—Conservative Revolutionary" (1976), Virginia Department of Education. (Discusses the role George Mason played in the founding of the government of the Commonwealth of Virginia, as well as his role in the founding of the government of the United States. The film reveals that the Bill of Rights was patterned after Mason's Virginia Declaration of Rights. It also tells of his daily life and shows his home, Gunston Hall.)

C. Videotape

"Ben Franklin," from the Stories of America Series (1976), Distributed by the Agency for Instructional Television (Traces Ben Franklin's life, ideas, inventions, and contributions to the development of America.)

"The opinions, findings and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Commission on the Bicentennial of the United States Constitution, and agency of the federal government."

This publication was partially funded by the Commission on the Bicentennial of the U.S. Constitution—Gn 87-CB-CX-0021

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